

THE DECLARATION OF CONDOMINIUM  
FOR  
HORIZON, A CONDOMINIUM

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**DECLARATION OF CONDOMINIUM  
FOR  
HORIZON, A CONDOMINIUM**

THIS DECLARATION was executed as of September 19, 2001, by HORIZON CONDOMINIUM DEVELOPMENT, INC., an Alabama corporation (the "Developer"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Code of Alabama 1975 §§ 35-8A-101 et seq. (the "Act"), for the purpose of forming a condominium pursuant to the Act, and establishing certain easements, covenants and restrictions to run with the land, all as more particularly provided below.

**RECITALS:**

A. Developer is the owner of the Condominium Property.

B. The Condominium Property is currently improved with nineteen (19) two and three-story multi-family residential buildings, which altogether contain 184 residential units, and with certain other improvements as reflected on the Condominium Plat and Plan.

C. Developer, by filing this Declaration pursuant to the Act, is creating a condominium with respect to the Condominium Property, to be known as Horizon, a Condominium, and is imposing upon the Condominium Property mutually beneficial restrictions under a general plan for the benefit of all of the Condominium Units established under this Declaration and for the benefit of the respective Owners of such Condominium Units from time to time.

NOW, THEREFORE, the Developer, through the recordation of this Declaration in the Probate Office, submits the Condominium Property, including all improvements thereon, to the provisions of the Act, with the intent that the Condominium Property, shall be held, conveyed, encumbered, hypothecated, improved, leased, occupied, used and utilized in accordance with all applicable provisions of the Act and subject to the affirmative obligations, conditions, covenants, limitations, restrictions and uses set forth in this Declaration, all of which are hereby declared and agreed to be in furtherance of a plan for the division of the Condominium Property into condominium ownership for the benefit of all of the Condominium Units and all of the respective Owners from time to time.

**ARTICLE I**

**DEFINITIONS**

1.01 Definitions. Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

(a) "Act" shall mean the Alabama Uniform Condominium Act of 1991, Code of Alabama §§ 35-8A-101 et seq., as the same may be amended from time to time.

(b) "Affiliate" means with respect to a Person, any other Person which is an affiliate of such Person under the Act.

(c) "Allocated Interest" means, with respect to a particular Condominium Unit, the percentage interest allocated to such Condominium Unit as indicated on Exhibit C hereto as same may be adjusted pursuant to this Declaration or pursuant to the Act, which percentage interest shall correspond to (i) the undivided interest in the Common Elements appurtenant to such Condominium Unit, (ii) the share of Common Expenses allocable to that Condominium Unit, and (iii) the voting rights in the Association of such Condominium Unit.

(d) "Applicable Insurance Requirements" means and refers to the requirements applicable to the Condominium Property from time to time with regard to required coverages, amounts of insurance, special endorsements, acceptable carriers and policies, deductible amounts, named insureds, notices of changes or cancellation, and other aspects concerning hazard insurance, flood insurance, liability insurance, fidelity insurance or other insurance (i) under relevant provisions of the Act and (ii) under the Secondary Lender Standards.

(e) "Articles" means the Articles of Incorporation for the Association, which have been filed of record in the Probate Office as Instrument 2001-40923

(f) "Assessment" shall mean an amount determined, fixed and assessed against any particular Condominium Unit under the provisions of this Declaration.

(g) "Assessment Lien" means the lien on any particular Condominium Unit for any Assessment levied against that Condominium Unit.

(h) "Association" shall mean HORIZON CONDOMINIUM ASSOCIATION, INC., a nonprofit corporation organized under the Articles pursuant to the Alabama Nonprofit Corporation Act, Code of Alabama §§ 10-3A-1 et seq.

(i) "Board" shall mean the Board of Directors of the Association.

(j) "By-Laws" shall mean the By-Laws of the Association, and such amendments thereto as may be approved from time to time pursuant to such By-Laws and any applicable provisions of the Act. (A copy of the initial version of the By-Laws is attached to this Declaration marked as Exhibit D).

(k) "Common Elements" shall mean and include the following: (i) the Land; (ii) the foundations and footings, bearing walls, perimeter walls, structural slabs, columns, beams and supports; (iii) the roofs, mechanical equipment and storage areas designated as common, stairways, entrances and exits; (iv) the components or installations of central services such as central air conditioning, ventilation, heating, power, light, electricity, gas, fire protection, security, cold and hot water, plumbing, reservoirs, water tanks and pumps, sewer lines, flues, trash compactors, incinerators, and the like, and all similar devices and installations existing for common use, but

excluding all components or installations of utilities and services which exist for private use in the Private Elements; (v) premises and facilities, if any, used for the maintenance or repair of the Condominium Property; (vi) all common recreational facilities such as any game, entertainment, meeting or assembly rooms, exercise rooms, swimming pool and grounds, sun deck, yards and walkways; (vii) greens, gardens, roadways, walking trails, yards, landscaping, storage sheds, central mail boxes, security houses, service streets and lighting shields; (viii) easements, rights or appurtenances affecting or relating to the use of the Condominium Property, unless specifically included in any Condominium Unit; and (ix) all other elements (other than Private Elements) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

(l) "Common Expenses" shall mean and include all expenses arising out of the ownership of the Common Elements, and shall include, without limitation, (i) expenses of administration of the Condominium Property; (ii) expenses of insurance; (iii) expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and any portion of a Condominium Unit maintained by the Association; (iv) any valid charge against the Condominium Property as a whole; and (v) expenses declared to be Common Expenses under or pursuant to the Condominium Documents. (The term Common Expenses shall not include any item or expense, if any, which is charged to any or all of the Owners under the Condominium Documents for usage of various components of the Common Elements.)

(m) "Condominium Documents" shall mean this Declaration, all Exhibits hereto, the Articles, the By-Laws, and any Rules and Regulations, all as the same may be amended from time to time.

(n) "Condominium Plat and Plan" shall mean the plat prepared by Gonzalez, Webb, Strength, dated September 11, 2001, as last revised September 13, 2001, with exhibits thereto, all of which is attached hereto as Exhibit B, as the same may from time to time be amended.

(o) "Condominium Property" shall mean the Land and all improvements and structures erected, constructed and contained therein or thereon, including all buildings, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to the provisions of the Act under this Declaration.

(p) "Condominium Unit" shall mean the Private Elements as shown on the Condominium Plan together with the undivided interest in the Common Elements and Limited Common Elements, if any, assigned thereto under the Condominium Documents.

(q) "Declarant" shall mean Horizon Condominium Development, Inc., an Alabama corporation.

(r) "Declaration" shall mean this instrument, and all Exhibits hereto, as it may from time to time be amended.

(s) “Designated Successor” shall mean and include any successor-in-interest to the Developer, with respect to all or a portion of the Developer’s Reserved Rights under an instrument expressly assigning such Reserved Rights to such party in accordance with this Declaration and with § 35-8A-304 of the Act.

(t) “Developer” shall mean the Declarant or any Designated Successor.

(u) “Eligible Mortgage Holder” means and includes each Mortgage Holder which has submitted a written request to the Association under Section 6.02 of this Declaration.

(v) “Estoppel Certificate” means a certification by the Association pursuant to § 35-8A-316(h) or § 35-8A-409(b) of the Act, as applicable.

(w) “Insurance Trustee” means and includes each Person designated from time to time by the Board to act in such capacity pursuant to § 35-8A-313(e) of the Act and Section 7.01(c) of this Declaration.

(x) “Land” shall mean the real estate in Shelby County, Alabama particularly described on Exhibit A hereto.

(y) “Limited Common Elements” shall mean and include any area designated as Limited Common Elements on the Condominium Plat and Plan, together with any other portions of the Common Elements which constitute limited common elements under applicable provisions of the Act.

(z) “Limited Common Expenses” shall mean and include all expenses arising out of the ownership of the Limited Common Elements and shall include, without limitation, (i) the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Limited Common Elements; and (ii) any other expenses declared to be Limited Common Expenses under or pursuant to the Condominium Documents. (The term Limited Common Expenses shall not include any item or expenses, if any, which is charged to any or all of the owners of the Limited Common Elements under the Condominium Documents for the usage of various components of the Limited Common Elements.)

(aa) “Major Decision” means and includes each and every amendment to or action under any of the Condominium Documents which effects any (i) changes in voting rights (except for the reallocation of Allocated Interests under the Act in connection with the destruction of Condominium Units or their taking by eminent domain); (ii) increases in Assessments that raise the previously assessed amount by more than 25%, or any changes to Assessment Liens or to the priority of Assessment Liens; (iii) reductions in the Working Capital Fund; (iv) changes in responsibility for maintenance and repair; (v) reallocation of interests in Common Elements or Limited Common Elements, or in rights to their use; (vi) redefinition of any Unit Boundary other than pursuant to Section 2.10 of this Declaration; (vii) convertibility or conversion of Condominium Units into Common Elements, or vice versa; (viii) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from Condominium; (ix) changes in hazard or

fidelity insurance requirements; (x) imposition of any restrictions on the leasing of Condominium Units; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Condominium Unit; (xii) decision by the Association to establish self-management; (xiii) restoration or repair of the project after damage or partial condemnation in a manner other than that specified in the Condominium Documents; (xiv) Major Improvements, other than emergency matters under Section 4.03(b) of this Declaration; or (xv) changes to any provisions of the Condominium Documents that expressly benefit Mortgage Holders.

(bb) "Major Improvements" means and includes any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements in accordance with the Condominium Documents in an instance where the funds required, exclusive of any condemnation award, insurance proceeds or reserves maintained for such purpose) exceeds \$100,000.

(cc) "Management Agreement" means the Management Agreement dated September 18, 2001 between the Association and the Manager.

(dd) "Manager" means E R Management, Inc., an Alabama corporation which is an Affiliate of Declarant.

(ee) "Mortgage Holder" means and includes each Person which holds any Security Interest or has guaranteed or insured the indebtedness secured thereunder.

(ff) "Mortgaged Unit" means, with respect to a particular Mortgage Holder, a Condominium Unit encumbered by a Security Interest held, guaranteed or insured by such Mortgage Holder.

(gg) "Occupant" means and includes any Person occupying all or any portion of any Condominium Unit for any period of time, regardless of whether such Person is a tenant, Owner or otherwise.

(hh) "Owner" shall mean and refer to every person or entity who is a record owner of a Condominium Unit.

(ii) "Period of Developer Control" means the period of time commencing with the filing of this Declaration in the Probate Office and continuing until the earliest of the following dates: (i) 60 days after the conveyance to Persons other than the Developer of the 138<sup>th</sup> Condominium Unit so conveyed (ii) 24 months after the end of the Sales Period or (iii) 36 months after the first Condominium Unit is conveyed to an Owner other than the Developer.

(jj) "Permittee" means and includes each guest, courier, delivery person, or other invitee who enters the Condominium Property with the express or implied permission of an Owner or Occupant, together with any employees, clients, customers, suppliers or other business invitees of an Owner or Occupant, provided that the inclusion of such Persons within this term does not

authorize any business use or activity on or about the Condominium Property not otherwise expressly allowed under the Condominium Documents.

(kk) “Person” means and includes (i) natural persons acting individually, in a representative capacity, as a trustee, or otherwise, as well as (ii) association; (iii) business trustee; (iv) corporations; (v) estates; (vi) general partnership; (vii) governmental agencies, bodies and subdivisions; (viii) joint ventures; (ix) limited liability companies; (x) limited liability partnerships; (xi) limited partnerships; (xii) trusts; and (xiii) any other legal or commercial entity.

(ll) “Private Elements” shall mean and include those parts of the Condominium Property intended for the exclusive ownership and possession by an Owner. Each Private Element shall include, without limitation, the three dimensional space defined by the Unit Boundaries of the particular Condominium Unit.

(mm) “Probate Office” means the Office of the Judge of Probate for Shelby County, Alabama, or any successor office having jurisdiction over the Land.

(nn) “Qualifying Owner” means and includes (i) during the Sales Period, the Developer and (ii) at any time every Owner which owns less than 10% of the Condominium Units.

(oo) “Qualifying Residence” means a Condominium Unit which is an owner-occupied principal residence or owner-occupied second home, or which otherwise satisfies Secondary Lender Standards.

(pp) “Registered Office” means the registered office maintained from time to time by the Association pursuant to the Articles and the Act.

(qq) “Reserved Rights” means and includes all of the various rights reserved to the Developer under the provisions of this Declaration, or accruing to the Developer under the Act because of Developer’s status as the Declarant.

(rr) “Rules and Regulations” shall mean those Rules and Regulations adopted from time to time by the Board that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or with the other Condominium Documents.

(ss) “Sales Period” means the period of time commencing with the filing of this Declaration in the Probate Office, and continuing for such period of time as the Developer continues to offer Condominium Units for sale in the ordinary course of business.

(tt) “Secondary Lender” means and includes Fannie Mae, Freddie Mac, HUD, and any other lender engaged in the business of guarantying, insuring or purchasing residential mortgage loans.

(uu) “Secondary Lender Standards” means and includes the guidelines, project standards and requirements from time to time of any Secondary Lender which has guaranteed, insured or purchased any Security Interest encumbering any Condominium Unit.

(vv) “Security Interest” means and includes any first priority interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation, including, without limitation, a mortgage, vendor’s lien, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease, rents intended as security, or any similar security device, consensual lien or title retention contract.

(ww) “Unit Boundaries” means the respective planes with respect to a particular Condominium Unit which define the horizontal and vertical boundaries of such Condominium Unit, as more particularly described in Section 2.02 of this Declaration and under the Act.

(xx) “Unit Type” refers to the general floor plan characterizing a particular Condominium Unit. There are seven (7) separate Unit Types, as shown in the Condominium Plat and Plan.

(yy) “Working Capital Fund” means the fund to be established under Section 5.01(d) of this Declaration.

## ARTICLE II

### CERTAIN BASIC CONDOMINIUM PROVISIONS

#### 2.01 Scope of Condominium.

(a) Maximum Number of Units. The maximum number of Condominium Units authorized by this Declaration is 184.

(b) Identification of Units. A description of each of the Condominium Units, including the Unit Type and unit identifying number, is set forth on the Condominium Plan.

(c) Allocated Interests. The Allocated Interest for each of the Condominium Units is shown on Exhibit C to this Declaration.

2.02 Unit Boundaries. The respective Unit Boundaries for each particular Condominium Unit shall be determined as follows:

(a) Vertical Boundaries. The vertical Unit Boundaries of a Condominium Unit shall be the vertical planes of the exterior surfaces of any exterior windows, exterior glass doors and exterior entry doors, together with the vertical planes of the exterior unfinished (i.e., exclusive of paint, wallpaper and like coverings) interior surfaces of the exterior walls, extended, in each case,

to the planar intersections of such vertical boundaries with each other and with the horizontal Unit Boundaries of such Condominium Unit.

(b) Horizontal Boundaries. The upper Unit Boundary of a Condominium Unit shall be the plane of the unfinished lower interior surface of the ceiling, and the lower Unit Boundary shall be the plane of the upper surface of the subflooring material which serves as the Condominium Unit's floor (excluding any carpeting, vinyl, hardwood, ceramic tile or like covering), extended in each case to the planar intersections with the vertical Unit Boundaries for such Condominium Unit.

(c) Status of Certain Items. Entry doors and exterior glass surfaces, including, without limitation, windows and glass doors which serve a Condominium Unit, shall be included within the Unit Boundaries of such Condominium Unit. Heating, ventilating, air conditioning, and other utility systems serving a single Condominium Unit shall be considered a part of such Condominium Unit, whether located within its Unit Boundaries or otherwise. If any shutes, flues, ducts, conduits, wires, pipes or other apparatus is partially within and partially outside of the designated Unit Boundaries of a Condominium Unit, then any portion thereof which serves only that Condominium Unit shall be deemed to be a part of such Condominium Unit, while any portions thereof which serve more than one Condominium Unit, or which serve any portion of the Common Elements, shall be deemed a part of the Common Elements. Each Condominium Unit shall include all non-structural interior partition walls located within the applicable Unit Boundaries, unless otherwise expressly provided herein, all finishing materials located within such Condominium Unit (including, without limitation, wallpaper, paint, interior brick surface, lathe, wallboard, plaster, carpeting and flooring) and any balcony or deck directly accessible only from the Condominium Unit.

2.03 Description of Certain Limited Common Elements. The Limited Common Elements reflected on the Condominium Plat and Plan, and the allocation thereof among the Condominium Units, may be summarized as follows: (i) any portion of any shute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside the designated Unit Boundaries of a Condominium Unit and which serves only that Condominium Unit is a Limited Common Element allocated solely to that Condominium Unit (and any portion thereof which serves more than one Condominium Unit, or which serves any portion of the Common Elements, is a part of the Common Elements); (ii) any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, exterior windows, or other exterior fixtures designed to serve a single Condominium Unit, and which are located outside the Unit Boundaries of such Condominium Unit, are Limited Common Elements allocated exclusively to that Condominium Unit; and (iii) each Condominium Unit has been assigned, as a Limited Common Element, one mailbox or mailslot.

2.04 Potential Additional Limited Common Elements. The respective parking spaces shown on the Condominium Plat and Plan are currently Common Elements, since no parking spaces are specifically assigned to any particular Condominium Units. The Developer reserves the right, during the Period of Developer Control, to allocate some or all of such parking spaces as Limited Common Elements to the respective Condominium Units, so long as such allocations do not discriminate in favor of Condominium Units owned by the Developer or its Affiliates. Following

the Period of Developer Control, the parking spaces may be designated and allocated as Limited Common Elements through an amendment to this Declaration.

2.05 Certain Reserved Rights. In accordance with Section 35-8A-205(8) of the Act, a description of certain Reserved Rights, together with a description of the real estate to which such right applies and the time limit within which such right must be exercised, is set forth on Exhibit F to this Declaration.

2.06 Certain Restrictions Applicable to Units. This Declaration establishes certain restrictions on the use, occupancy and leasing of Condominium Units, as more particularly described in Article III. In addition, Rules and Regulations related to the conduct of Owners and aesthetic considerations concerning the Condominium may be adopted by the Association from time to time and are not included in this Declaration. There are no restrictions under this Declaration on alienation of Condominium Units, or on the amount for which a Condominium Unit may be sold. Certain provisions concerning the amount which may be received by an Owner on the condemnation or casualty loss to a Condominium Unit or to the Condominium, or on the termination of the Condominium, are described in Article VII of this Declaration.

2.07 Certain Pertinent Easements. Apart from the various easement rights and burdens established in the Condominium Documents, the Condominium Property is also subject to those restrictions, easements, conditions and limitations now of record in the Probate Office which are described on Exhibit G attached hereto.

2.08 Developer's Sales Facilities and Advertising Signage. The Developer hereby reserves the right to maintain a sales office in the office/clubhouse building throughout the Sales Period, and to maintain three model units (a one-bedroom model, a two-bedroom model and a three-bedroom model) throughout the Sales Period. Initially, the model units will be located in Unit numbers 1302, 1310 and 1707. If and when any such model unit is conveyed to anyone other than the Developer, the Developer shall have the right to relocate such model unit to another Condominium Unit of a similar Unit Type (i.e., one-bedroom, two-bedroom or three-bedroom, as applicable) then owned by the Developer. Under § 35-8A-215 of the Act, the Developer may maintain signs on the Common Elements advertising the Condominium, subject to the provisions of state law, and to local ordinances, but without any limitation under the terms of the Condominium Documents.

2.09 Period of Developer Control. In accordance with Section 35-8A-303(d) of the Act, the Developer hereby reserves the right, during the Period of Developer Control, to appoint and remove the officers of the Association and members of the Board, subject to the limitation imposed under Section 35-8A-303(e) of the Act.

2.10 Certain Amendments to Condominium. With respect to Condominium Units owned by the Developer, Developer reserves the right to change the interior design and arrangement, to alter Unit Boundaries established by the common walls separating such Units, and to increase or decrease the number of such Condominium Units so long as the Allocated Interests of any Owners, other than the Developer, are not affected. Any such changes may be reflected by an amendment to the Condominium Plan, to the Condominium Plat, or to the Declaration, which need be signed and

acknowledged only by the Developer, and need not be approved by any other Owners or any Mortgage Holders.

2.11 Certain Easements Established. In addition to the easement rights referred to on Exhibit G to this Declaration, the Developer hereby establishes and reserves the following easements:

(a) Certain Utility Services. Utility easements are reserved throughout the whole of the Condominium Property, including Condominium Units, as may be required for utility services (including, without limitation, water, sewer, gas, electricity, telephone and cable television) in order to adequately serve the Condominium Property. There may be utility equipment located on the Common Elements appurtenant to some Condominium Units. An easement is hereby reserved in favor of each Condominium Unit for the purpose of placement, maintenance, repair and replacement of any such utility equipment by Developer and the Owners of the appurtenant Condominium Unit; provided that no utility equipment shall be placed in any part of the Common Elements or Limited Common Elements other than in its present location or as shown on the Condominium Plan without the written approval of the Association.

(b) Rights of Ingress and Egress. Each Owner has an unrestricted right of ingress and egress to his or her Condominium Unit, which right shall be perpetual (subject to the provisions of this Declaration concerning termination of the Condominium) so that such right passes with the Owner's Condominium Unit as transfers of ownership occur. The Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement over all roads, parking areas, walkways, halls, stairways and other common areas in favor of all Owners, Occupants and Permittees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended, subject to all restrictions in the Condominium Documents.

(c) Encroachments. To the extent that any Condominium Unit, Common Element or Limited Common Element encroaches on any other Condominium Unit, Common Element, or Limited Common Element, whether by reason of any deviation between the Condominium Plat and Plan and the original construction, or by reason of reconstruction, repair, shifting, settlement or other movement of any portion of the improvements, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching Condominium Unit, Common Element or Limited Common Element stands. Such easement rights shall not absolve any Owner from liability if he or she has failed to substantially adhere to the Condominium Plat and Plan, or is determined to be guilty of any willful misconduct.

(d) Support. Each Condominium Unit and all portions of the Common Elements and Limited Common Elements shall have an easement of support from every other Condominium Unit or portion of the Common Elements or Limited Common Elements which provides such support.

(e) Access to Limited Common Elements. Each Owner of a Condominium Unit which has a Limited Common Element as an appurtenance thereto shall have an easement for the

repair, maintenance and upkeep of such Limited Common Element and for vehicular and pedestrian ingress and egress to and from such Limited Common Element for so long as such Limited Common Element exists. The aforesaid easement shall be for the benefit of each Owner whose Condominium Unit has as an appurtenance the Limited Common Elements in question, and also for the Occupants and Permittees of each such Owner.

(f) Project Maintenance. The Association shall have a right of entry to any Condominium Unit to perform emergency repairs or to do other work necessary for the maintenance of the Condominium.

(g) Reservation by Declarant. The Declarant hereby reserves a blanket easement over the Condominium Property, for a period of 20 years from the date of this Declaration, for any all lawful activities required or related to the exercise of the Reserved Rights or for the performance of any duty or obligation imposed on the Declarant under the provisions of the Condominium Documents, the Act, or other applicable laws. The Declarant shall exercise the rights reserved under this provision in a matter which does not unreasonably interfere with the use and enjoyment of the Condominium Property by any Owner.

(h) Additional Grants. In addition to the easements specifically declared or reserved under this Declaration, the Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium.

(i) Appurtenances to Units. The easements and other rights created herein shall be appurtenant to the respective Condominium Units. Each conveyance of title to any Condominium Unit shall include a conveyance of the easements and rights appurtenant thereto even though no specific reference to such easements and rights appears in such conveyance.

(j) Attorneys-in-Fact. Every Owner, by accepting title to a Condominium Unit, shall be deemed to have designated the Developer and the Association as such Owner's lawful attorneys-in-fact to execute any and all instruments, on such Owner's behalf, for the purpose of creating, confirming and documenting all such easements as are contemplated by the provisions hereof.

## 2.12 Certain Property Interests.

(a) Ownership of Common Elements. Each Owner shall own an undivided interest, in accordance with his Allocated Interest, in and to the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Condominium Unit.

(b) Use of Limited Common Elements. The allocation of the Limited Common Elements shall be as set forth in this Declaration, on the Condominium Plan, on the Condominium

Plat or under provisions of the Act which are not inconsistent with any of the Condominium Documents. The extent or amount of such ownership shall be expressed by a designation or description of the Limited Common Elements which are appurtenant to a given Condominium Unit, and the Owners of such Condominium Units shall have the right to use such Limited Common Elements so designated or described to the exclusion of the Owners whose Condominium Units are not appurtenant to such Limited Common Elements, unless changed by the approval of the Owners of the Limited Common Elements and their respective Mortgage Holders. Each Owner of a Condominium Unit to which the Limited Common Element is attached shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of his Condominium Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Condominium Units to which the Limited Common Elements are attached.

(c) Statutory Provisions. Pursuant to § 35-8A-207 of the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Condominium Unit to which that interest is allocated is void.

### ARTICLE III

#### OCCUPANCY, USE AND LEASING RESTRICTIONS

3.01 General Restrictions Concerning Units. The use of each Condominium Unit by its Owner, and by any Occupants or Permittees, is subject to all of the following restrictions:

(a) Residential Use. Subject to Section 3.01(b) below, concerning certain ancillary business activities, and to Section 3.01(c), concerning certain activities by the Developer, each Condominium Unit is hereby restricted to residential use and the conduct of a business or trade therein is not permitted. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provisions of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. The foregoing restrictions shall not, however, be construed to prohibit any Owner or Occupant from maintaining a personal or professional library, keeping personal business or professional records or accounts, or handling telephone calls or correspondence relating to personal business or profession, which uses are hereby declared to be customarily incidental to residential use and not in violation of this restriction.

(b) Certain Ancillary Business Activities. Notwithstanding the general residential character of the Condominium, and the restriction on use provided for in Section 3.1(a) above, each Owner and Occupant may conduct ancillary business activities within a Condominium Unit so long as (i) the existence or operation of such business activity is not apparent or detectable by sight, sound

or smell from outside the Condominium Unit; (ii) such business activity does not involve visitation by Permittees in greater volume than would normally be expected for guest visitation to a Condominium Unit without business activity; (iii) the business activity is legal and conforms to all zoning requirements; (iv) the business activity does not include traffic in the Condominium Unit in excess of what would normally be expected for a Condominium Unit without business activity; (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (vi) the business activity is consistent with the general residential character of the Condominium, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents, as determined in the Board's discretion and (vii) such business activity does not result in a materially greater use of Common Element facilities or Association services.

(c) Rights of Developer. Notwithstanding any other provisions of the Condominium Documents, the Developer may make such use of unsold Condominium Units and of Common Elements during the Sales Period as may facilitate the completion of any contemplated improvements and the sale by the Developer of any unsold Condominium Units, including, without limitation, the sales activities specifically mentioned in Section 2.08 above.

(d) Legal Requirements. Each Condominium Unit shall be used, occupied, leased and altered only in compliance with all applicable laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium Property.

(e) Hazardous Uses. No Owner shall permit anything to be done or kept in its Condominium Unit which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property.

3.02 Use of Common Elements. Use of Common Elements and Limited Common Elements by Owners, Occupants and Permittees is subject to the following restrictions:

(a) Obstructions. There shall be no obstruction on the Common Elements or Limited Common Elements.

(b) Storage. Nothing shall be kept or stored in the Common Elements or Limited Common Elements, except on balconies, patios and terraces appurtenant to a Condominium Unit, and in any storage facilities shown as such on the Condominium Plan. Storage spaces shall be used solely for the purpose of storing any personal property belonging to the Owner or Occupant of the Condominium Unit to which that storage space is assigned as a Limited Common Element. No Owner or Occupant shall store any explosives, or any flammable, odorous, noxious, corrosive, hazardous or pollutant materials on or about the Condominium Property.

(c) Legal Requirements. The Common Elements shall be used in compliance with all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction.

(d) Waste and Hazardous Uses. No waste shall be committed to the Common Elements or Limited Common Elements, and no Owner shall permit anything to be done or kept in

the Common Elements or Limited Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property or which would otherwise increase the Common Expense. If hazardous substances are stored, used, generated or disposed of on or in the storage space or if the storage space becomes contaminated in any manner for which the Owner or Occupant thereof is legally liable, such Owner or Occupant shall indemnify and hold harmless the Developer, Association, Board and the other Owners from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of that contamination by Owner or Occupant.

3.03 Alterations of and Improvements to Units. Subject to the other provisions of the Condominium Documents, alterations to the interior of Condominium Units, relocation of Unit Boundaries between adjoining Condominium Units, and subdivision of Condominium Units, are subject to the following restrictions:

(a) Interior Alterations. No Owner or Occupant may make any alteration within the Condominium Unit (i) which involves connecting to Common Element pipes, lines, conduits and/or other apparatus (ii) which affects any structural or load bearing portions of a Condominium Unit or (iii) which is visible from the exterior of the Condominium Unit, without in each instance first obtaining the prior written approval of the Board.

(b) Relocation of Boundaries. Boundaries between adjoining Condominium Units shall not be relocated other than as allowed under Section 2.10 of this Declaration, except that if any Owner acquires adjoining Condominium Units, such Owner shall have the right, subject to Section 3.03(e) below, to remove all or any part of the intervening partition, or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or in part, be part of the Common Elements, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Elements is damaged, destroyed or endangered, other than the particular partition involved and any shutes, flues, ducts, conduits, wires or other apparatus contained therein (which shall be relocated by such Owner if such facility served any other part of the Condominium Property).

(c) Subdivision of Units. No Condominium Unit shall be subdivided into a smaller Condominium Unit or Units.

(d) Certain Enclosures. Enclosure of balconies and patios is prohibited.

(e) Required Approvals. All repairs, alterations and other work by or on behalf of any Owner, whether required under the provisions of the Condominium Documents or permitted thereunder, shall be performed by qualified and licensed contractors or other professionals authorized to do such work by the Association. Review and approval of any application for permission to effect alterations or improvements pursuant to this Section shall be made by the Association on the basis of aesthetic considerations only. Neither the Developer, the Board or the Association shall bear any responsibility for insuring the structural integrity or soundness of any approved construction or modifications, or for insuring compliance with building codes and other

governmental requirements, and none of them shall be liable in any manner or to any extent for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Condominium Unit.

#### 3.04 Rules and Regulations.

(a) Authorization. The Association is authorized to promulgate, amend and enforce Rules and Regulations from time to time, so long as any such Rules and Regulations are not contrary to or inconsistent with the Act or any of the other Condominium Documents. Any such Rules and Regulations may address, without limitation, the maximum number of occupants for each Unit Type, pet policies, parking, heating of units in colder months, rubbish, trash and garbage, unsightly and unkempt conditions, garage sales, window treatments, antennas and satellite dishes, firearms and fireworks, and any other matters reasonably related to conduct by Owners, Occupants and Permittees or to aesthetic considerations affecting or concerning the Condominium.

(b) Delivery of Copies. A copy of any such Rules and Regulations, and of any amendment or supplement thereto adopted from time to time, shall be furnished by the Board to each Owner, in each case, prior to the date on which such Rules and Regulations, amendment or supplement become effective.

(c) Enforcement. The Association may promulgate enforcement provisions concerning the violation of any such Rules and Regulations by Owners, Occupants and Permittees, including, without limitation, provision for the Assessment of fines for such violations against the Condominium Unit and the Owner whose use, activity, Occupant or Permittee violated any Rule or Regulation.

#### 3.05 Leasing Restrictions.

(a) Formal Requirements. Condominium Units may be leased by the respective Owners provided that (i) any such lease, and the rights of any Occupant thereunder, are expressly subject to all of the Condominium Documents, and to the right of the Association to enforce the provisions thereof directly against such Occupant (ii) each such lease or rental agreement shall be in writing; (iii) at least seven (7) days prior to entering into the lease, the Owner shall provide the Board with a copy of the proposed lease agreement for review and approval (if the lease form is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Condominium Documents); (iv) Condominium Units may be leased only in their entirety; (v) the Owner must provide the lessee copies of the Condominium Documents; and (vi) within ten (10) days after executing a lease agreement, the Owner shall provide to the Board a copy of the lease, together with the name of the lessee and of all other people occupying or authorized to occupy the Condominium Unit.

(b) Approval Standards. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee. The Board's approval or disapproval shall be limited to the form of the proposed lease.

## ARTICLE IV

### MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

#### 4.01 Association's Maintenance and Repair Obligations.

(a) Common Elements. The Association, acting through the Board, shall be responsible for the maintenance, repair and replacement of (i) the Common Elements (which by definition excludes all interior wall surfaces, and all floors, ceilings, entrance doors, and windows); (ii) any incidental damage caused to a Condominium Unit by any work done by the Association; (iii) portions of the Condominium Units contributing to the support of the buildings, including outside walls and load bearing columns, excluding, however, interior wall and floor surfaces; and (iv) any damage caused solely by the Association's failure to meet its maintenance, repair and replacement obligations under the foregoing clauses, or directly caused by the failure of any items which the Association is responsible to maintain. All costs incurred in connection with any of the foregoing shall be charged to all of the Owners as a Common Expense.

(b) Limited Common Elements. The Association, acting through the Board, shall be responsible for the maintenance, repair and replacement of the Limited Common Elements. All costs incurred in so doing shall be charged to all of the Owners to which the affected Limited Common Elements have been allocated, as a Limited Common Expense.

#### 4.02 Owner Repair Obligations.

(a) In General. Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain the Private Elements attributable to his Condominium Unit in good tenantable condition and repair. Such obligations shall include, without limitation, the repair, maintenance and replacement if necessary of (i) fixtures and equipment, including the refrigerator, stove and all other appliances; (ii) drains, sinks, plumbing and plumbing fixtures and connections; (iii) electrical panels, wiring, outlets and electric fixtures; (iv) interior doors, window frames, screening and glass; (v) all exterior doors, except the painting of the exterior faces of the exterior doors and windows which shall be the responsibility of the Association; (vi) all wall coverings including paint, wallpaper and light coverings; (vii) all flooring including carpeting, vinyl and ceramic tile within a Unit; and (viii) plumbing, heating, air conditioning, electrical gas and mechanical systems, including fuse boxes, and wiring serving only that Condominium Unit, whether located within or without the boundary of that Condominium Unit. In the event any such system or a portion thereof which is to be maintained, repaired or replaced by an Owner is within another Condominium Unit, or requires access to another Condominium Unit, the repair, maintenance or replacement thereof shall be performed by the Association, and the cost thereof shall constitute an Assessment against the Owner responsible therefor.

(b) Certain Damage. The provisions of Section 4.01 above shall not relieve an Owner of liability for any damage to the Common Elements or Limited Common Elements caused

by the Owner, his Occupants, or Permittees. The cost of repair for any damage so caused shall be a special Assessment against the Owner whose act, omission, Occupant, or Permittee caused the same.

#### 4.03 Certain Major Improvements by the Association.

(a) Required Approvals. Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article VII of the Declaration, the Association shall not make any Major Improvements unless the same are authorized by the Board, ratified by the Owners pursuant to the applicable provisions of the By-Laws and approved by the Mortgage Holders under Section 6.01(e) of this Declaration. The cost of any approved Major Improvements shall be assessed against the Owners as a Common Expense; provided, however, that if any such approved Major Improvements are exclusively or substantially for the benefit of the Owners requesting the same, then the cost of such alterations or additions may be assessed against and collected solely from such Owners, with the Assessments related thereto to be levied in such proportions as may be determined to be fair and equitable by the Board.

(b) Emergency Matters. Notwithstanding the foregoing, Major Improvements of an emergency nature may be made upon authorization of a majority of the Directors available for consultation if such action is necessary and in the best interest of the Owners.

#### 4.04 Certain Utilities and Services.

(a) Utility Charges. Each Owner shall be responsible for payment of all charges for utilities used or consumed in his Condominium Unit, including, without limitation, electricity, gas, cable television, and telephone service. Utilities serving the Common Elements shall be paid by the Association as a Common Expense. In the event that utilities provided to the Common Elements and to the Condominium Units are not separately metered, the Association shall have the authority to apportion the charges between the Common Elements and the Condominium Units, and among the respective Condominium Units, on such basis as the Association may deem to be reasonably appropriate.

(b) Limitation of Liability. The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service obtained by the Association or paid for out of the Common Expense funds, for problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements, Limited Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Condominium Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements or Limited Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, Limited Common Elements or to any Condominium Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive

of any municipal or other governments or judicial authority or for the dispossession of any Owner by reason of fire or other casualty, except to the extent covered by insurance.

4.05 Professional Management. During the Period of Developer Control it is anticipated that certain duties in connection with management of the Condominium Property will be performed by the Manager pursuant to the provisions of the Management Agreement. Since the Manager is an Affiliate of the Declarant, the Management Contract is subject to termination after the Period of Developer Control in accordance with § 35-8A-305 of the Act. Unless self management is approved pursuant to this Declaration, from and after any termination of the Management Agreement the Condominium shall be under professional management pursuant to a written contract which is in compliance with Secondary Lender Requirements.

4.06 Availability of Project Documents. The Association shall maintain current copies of all of the Condominium Documents, as well as the books, records and financial statements of the Association. Such documents shall be available for inspection by all Owners and by all holders, insurers, and guarantors of any first priority Security Interests encumbering Condominium Units during normal business hours.

## ARTICLE V

### CONDOMINIUM ASSESSMENTS AND FINANCES

#### 5.01 Condominium Assessments.

(a) Authority Granted to Association. To provide the funds necessary for the proper management and operation of the Condominium Property, the Association is hereby granted the right to make, levy, and collect Assessments against the Owners to pay Common Expenses and to pay such other expenses as the Association is authorized to incur under the Act or the Condominium Documents.

(b) Allocation Among Owners. Unless the Condominium Documents otherwise provide, each Owner which is subject to any Assessment under Sections 5.02(a) or 5.02(b) above shall be obligated to pay a pro rata share of such Assessment based on such Owner's Allocated Interest divided by the aggregate Allocated Interests of all of the Owners who are obligated to pay such Assessment.

(c) Owner Payment Obligations. All Condominium Owners shall be personally obligated to pay the Assessments adopted and allocated to that Owner pursuant to the terms of the Condominium Documents. No Owner may exempt himself from liability for his contribution toward Common Expenses or Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements, of Limited Common Elements, by abandonment of his Condominium Unit, or otherwise. No Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses assessed against his Condominium Unit subsequent to a sale or other conveyance by him of such Condominium Unit. The purchaser of a Condominium Unit shall be

jointly and severally liable with the selling Owner for all unpaid Assessments up to the time of conveyance, without prejudice to the purchaser's right to recover from the selling Owner.

(d) Provisions Concerning Developer. Pursuant to § 35-8A-207(a) of the Act, the allocation of Assessments may not discriminate in favor of Condominium Units owned by the Declarant or its Affiliates. Accordingly, the Developer shall be legally responsible for Assessments pertaining to unsold Units. The Developer shall establish a Working Capital Fund for the Association, to meet unforeseen expenditures and to purchase any additional equipment or services by collecting and remitting to the Association, as each Condominium Unit is sold, an amount equal to 2 months of estimated common charges for such Condominium Unit. If and to the extent necessary under any applicable Secondary Lender Standards, the Developer shall make an additional deposit to the Working Capital Fund in an amount not exceeding two months of estimated common charges for the Condominium Units which are still owned by Developer and have not been sold. In the event that the Developer makes such a contribution, the Developer may require reimbursement at the closings thereafter occurring for the contributions which the Developer has made to the Working Capital Fund for the respective Condominium Units then being conveyed.

(e) Income Assignments. Pursuant to § 35-8A-302(a)(14) of the Act, the Association may assign its right to future income, including without limitation the right to receive Assessments with respect to Common Expenses, subject to the approvals required under Section 6.01(e) of this Declaration, as security for indebtedness or for any other proper purpose determined by the Board.

#### 5.02 Particular Assessments.

(a) Common Expenses. All Assessments for Common Expenses shall be levied annually against the Owners of all Condominium Units, and shall be payable over the course of the year in advance monthly installments due on the first day of each calendar month, or in such other installments and at such times as may be determined by the Board.

(b) Limited Common Expenses. Assessments for Limited Common Expenses shall be levied against the Owners of those Condominium Units to which the Limited Common Elements are appurtenant, and shall be payable in such installments and at such times as may be determined by the Board.

(c) Usage Fees. The Association may assess against and allocate to one or more Owners expenses for the repair and maintenance of various components of the Common Elements, including the funding of any reserves therefor, based on usage. Any such Assessments shall not be included in the Assessment for Common Expenses, and shall be payable in such manner and at such times as may be determined by the Board.

(d) Certain Additional Assessments. Should the Board at any time determine in its sole discretion of the Assessments levied are or may prove to be insufficient for any reason, including emergencies and non-payment of any Owner's Assessment, the Board shall have authority to levy such additional Assessments as it shall deem necessary in accordance with the applicable

provisions of the Condominium Documents and the Act. Such Assessments may include, without limitation, Assessments to any Owner of Common Expenses which are caused by any misconduct of that Owner, or of his or her Occupants or Permittees.

5.03 Annual Budgets.

(a) Initial Budget. The initially projected and estimated annual maintenance budget for the Condominium Property is attached to the Declaration as Exhibit E.

(b) Subsequent Budgets. Within sixty (60) days prior to the beginning of each calendar year, the Board shall adopt a proposed annual budget for such calendar year, including reasonable allowances for contingencies and reserves, in accordance with the Act and Condominium Documents. After approval of a proposed budget by the Board, such budget shall be subject to ratification by the Owners in accordance with the applicable provisions of the By-Laws and the approval of Mortgage Holders to the extent required under Section 6.01(e) of this Declaration.

(c) Delay in Approval. In the event that any proposed budget is rejected, or the Board for any other reason fails to fix Assessments for any calendar year or other period, such occurrence shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, and shall not release any Owner from the obligation to pay Assessments for any period, but in any such event the budget most recently in effect shall continue in effect until such a time as a new budget is approved and ratified, and the Assessments fixed under such budget shall continue until new Assessments are fixed.

5.04 Effect of Default.

(a) Interest Accruals. Each Assessment not paid to the Association as and when due shall be delinquent, and shall bear interest at a rate of 21% per annum, or the maximum legal rate, whichever is less, until the delinquent Assessment, all interest due thereon, and all costs of collection incurred in connection therewith, have been paid in full.

(b) Application of Payments. All payments received with respect to any delinquent Assessment shall be applied first to costs of collection, including, without limitation, attorneys' fees and expenses, then to accrued and unpaid interest, and finally to the delinquent Assessment itself.

(c) Remedies. On default in payment of any Assessment, the Association shall have the right to (i) enforce the personal obligation of the Owner for payment of such Assessment, including interest and costs of collection (ii) enforce the Assessment Lien against such Owner's Condominium Unit for the collection of all such amounts and (iii) temporarily suspend that Owner's rights to use any or all Common Elements until the Assessment, accrued interest and costs of collection have been paid in full. Such rights may be exercised cumulatively or alternatively by the Association, and the enforcement or attempted enforcement of one or more such rights shall not preclude the enforcement or attempted enforcement of any others.

5.05 Assessment Liens.

(a) Nature of Lien. Pursuant to the Act, the Association has an Assessment Lien on each Condominium Unit for all Assessments against that Condominium Unit, including any fines, fees, charges, late fees, costs of collection and interest payable under the Condominium Documents or the Act by the Owner of such Condominium Unit.

(b) Priority of Lien. Subject to any contrary Secondary Lender Standards, the priority of each Assessment Lien shall be governed by § 35-8A-316(b) of the Act. In the case of any conflict between any Secondary Lender Standards and this statutory provision, the terms most favorable to Mortgage Holders shall be controlling to the fullest extent permitted by applicable law.

(c) Other Statutory Provisions. Each Assessment Lien may be foreclosed in the same manner as a mortgage on real estate, provided the Association shall give reasonable advance notice of its proposed action to the affected Owner and to all lien holders of record of the Unit. Each Assessment Lien shall be entitled to all benefits of and be construed and enforceable in accordance with all provisions of the Act which are not inconsistent with the provisions of the Condominium Documents.

(d) Estoppel Certificates. From time to time on request the Association shall be authorized to and shall provide Estoppel Certificates pursuant to the applicable provisions of the Act.

**ARTICLE VI**

**CERTAIN PROVISIONS AFFECTING MORTGAGEES**

6.01 Particular Provisions. It is the intent of the Developer to promote and facilitate financing for the purchase of Condominium Units, for any addition, alteration or renovation of Condominium Units permitted under the terms of the Condominium Documents, and the refinancing from time to time of any such financing, under the following terms and provisions.

(a) Right of Inspection. Each Mortgage Holder shall have the right to examine the books and records of the Association from time to time and to inspect the Condominium Property. In addition, each Mortgage Holder shall be entitled, upon written request, to receive within a reasonable time after request, and free of charge, a copy of the most recent financial statement of the Association available and a copy of the then current annual budget.

(b) Availability of Audited Statements. To the extent required under Secondary Lender Standards, the Association, from time to time upon request of any holder, insurer or guarantor of any Security Interest encumbering a Condominium Unit shall obtain and provide an audited statement for the Association's most recently preceding full fiscal year.

(c) Certain Lender Standards. The Association shall have the authority subject to Section 6.01(e) of this Declaration, to include in the Rules and Regulations such policies and

procedures with respect to Qualifying Residences and Qualifying Owners as may be necessary or appropriate to comply with any Secondary Lender Standards.

(d) Required Notifications. Each Eligible Mortgage Holder shall be entitled to receive timely notice from the Association of (i) condemnation loss or casualty affecting a material portion of the Condominium Property or affecting any Unit on which it holds a Security Interest; (ii) any delinquency in the payment of Assessments owed by an Owner of a Unit on which it holds a Security Interest which remains unsatisfied for a period of 60 days, and any other default in the performance by any such Owner of its obligations under any of the Condominium Documents which has not been cured within 60 days after demand; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (iv) any Major Decision or other proposed action which would require the consent of the specified percentage of Eligible Mortgage Holders or Mortgage Holders under the provisions of this Declaration or under any provisions of the Act which are not inconsistent with the Condominium Documents; and (v) the foreclosure of any Assessment Lien with respect to any of its Mortgaged Units.

(e) Mortgage Holder Approvals. No Major Decision shall be made or implemented without the approval of (i) at least 67% of the total allocated Owner votes in the Association and (ii) Eligible Mortgage Holders which represent at least 51% of the votes of the Mortgaged Units held by all of the Eligible Mortgage Holders. In addition, any termination of the Condominium for reasons other than substantial destruction or condemnation shall occur without the approval of Eligible Mortgage Holders which represent at least 67% of the votes of the Mortgaged Units held by all of the Eligible Mortgage Holders.

6.02 Eligible Mortgage Holders. Any Mortgage Holder which desires to become an Eligible Mortgage Holder may do so through providing notice to the Association, by certified mail, return receipt requested, and addressed to the Registered Office, setting forth its name and address and the unit numbers of its Mortgaged Units.

6.03 Other Condominium Provisions. In the event of any conflict between Article VI of this Declaration and any other provision of the Condominium Documents, the provisions of Article VI shall control, provided that: (i) the provisions of Article VI shall not operate to deny or delegate control by the Board or Owners over the general administrative affairs of the Association, to prevent the Board or Association from commencing, intervening in or settling any litigation or proceeding, or to permit any Mortgage Holder to receive any insurance proceeds in any manner except as provided in Section 35-8A-312 of the Act; (ii) the implied consent provision of Section 11.10 of this Declaration shall apply without limitation to any required consents under Section 6.01(e) above; and (iii) the provisions of Section 6.01(e) shall not be construed to reduce the percentage vote that must be obtained from Mortgage Holders or Owners where a larger percentage vote is otherwise required by the Act or other provisions of the Condominium Documents.

## ARTICLE VII

### INSURANCE, CASUALTY AND CONDEMNATION

7.01 The Association's Role.

(a) Maintenance of Insurance. Commencing not later than the first conveyance of a Condominium Unit to any Person other than the Developer, the Association shall obtain and maintain insurance, to the extent reasonably available, in accordance with all applicable provisions of the Act, Condominium Documents and Secondary Lender Requirements. The named insured on all such policies shall be the Association, for the use and benefit of the Owners. Any loss payable clause shall show the Association and/or Insurance Trustee as payee, as a trustee for each Owner and Mortgage Holder. The Board shall make available for review by each Owner copies of the Association's insurance policies. If the insurance described above is not reasonably available, the Association shall so notify the Owners in accordance with Section 35-8A-313(c) of the Act. The Association may carry any other insurance which the Board deems appropriate, including, without limitation, directors' and officers' liability insurance, in such amounts, from such sources and in such forms as it deems desirable. The premiums for all such insurance shall constitute a Common Expense.

(b) Periodic Review. It shall be the duty of the Board, not later than 24 months after the first conveyance of a Condominium Unit to any Person other than the Developer, and at least every 24 months thereafter, to conduct an insurance review to determine if the coverage in force is adequate to meet the needs of the Association and is in compliance with the Act and Secondary Lender Requirements; provided, however, that such responsibility shall be deemed to have been performed by the Board if it requests that the Association's insurance agent verify that the coverage in effect meets the needs of the Association and satisfies such requirements. If necessary or appropriate, prior to the renewal of any hazard insurance, the Board shall obtain an opinion or appraisal for the purpose of determining replacement costs of the Common Elements and Private Elements. The expense incurred in so doing shall be a Common Expense.

(c) Administration of Claims. The Board may from time to time engage the services of a bank or trust company authorized to do business in Alabama, and having capital and surplus of not less than \$50,000,000, to act as an Insurance Trustee in accordance with the provisions of this Declaration and of the Act. In the case of any insured loss exceeding \$100,000, the Association, upon written demand of Eligible Mortgage Holders which represent at least 51% of the Mortgaged Units held all of the Eligible Mortgage Holders, or of Owners whose aggregate Allocated Interests equal or exceed 25%, shall engage such a Person to act as Insurance Trustee. The terms and provisions of engagement of any such Insurance Trustee, including, without limitation, provisions concerning compensation, reimbursement of expenses, limitations of liability, and rights to rely upon certificates of the President and Secretary of the Association provided to such Insurance Trustee, shall be as determined by the Board and such Insurance Trustee provided that such terms and conditions are not inconsistent with any provisions of the Act, the Condominium Documents or Secondary Lender Requirements. Exclusive authority to adjust all claims under policies maintained by the Association, or which are deemed to have been maintained by the Association pursuant to Section 7.02(d) below, shall be vested in the Association or its authorized representatives. The Association shall have the authority to designate and engage such appraisers as may be necessary or appropriate in connection with any of the provisions of the Act pertaining

to the allocation of insurance proceeds or of liability for the expense of any repairs or restoration that are not covered by insurance.

7.02 Responsibilities of Owners.

(a) Risk of Loss. Risk of loss or damage to any furniture, furnishings and personal property belonging to or carried on the person of any Owner, Occupant or Permittee, or which may be stored in any Condominium Unit, or stored by any Owner, Occupant or Permittee in or upon any Common Elements or Limited Common Elements, shall be borne by that Owner, Occupant or Permittee, as the case may be.

(b) Owner Improvements. Each Owner shall notify the Association of all improvements or betterments made by that Owner to his Condominium Unit having a value in excess of \$10,000.

(c) Expenditures Caused by Owner. Each Owner shall be liable for any damage not covered by insurance, including, without limitation, the deductible amounts with respect to any applicable coverage, in connection with any occurrence caused by such Owner, his Occupants or Permittees. If more than one Owner is liable for an occurrence under the preceding sentence, then the responsibility shall be allocated among them in accordance with their respective Allocated Interests, or in such other manner as the Board may reasonably determine.

(d) Separate Coverage. Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Condominium Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, an Owner shall furnish a copy of such insurance. If any Owner fails to obtain such insurance, the Association may purchase the same on his or her behalf, and assess the cost thereof to that Owner. Each Owner may, at his or her own expense, obtain such additional insurance coverage as such Owner may desire. Any Owner who obtains an individual policy covering any portion of the Condominium Property other than personal property belonging to such Owner shall file a copy of such policy with the Association within thirty (30) days after its purchase. In no event shall any insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by any Owner or Mortgage Holder. In the event that any hazard insurance maintained by an Owner causes a decrease in the amount of insurance coverage available to the Association on a casualty loss, by reason of proration or otherwise, the Owner maintaining such insurance shall be deemed to have assigned to the Association the proceeds collected under such policy, to the extent of such reduction, which proceeds shall be paid directly to the Association by the insurer and shall be applied and distributed by the Association in the same manner as though such proceeds were collected under the Association's own policies.

(e) Duty to Report. Each Owner shall have a duty to report to the Association any casualty damage or unsafe condition actually known to such Owner.

7.03 Insufficient Proceeds. On each occurrence, available hazard insurance proceeds shall be applied first to the repair, replacement or reconstruction of any damaged Common Elements, then

to any damaged Limited Common Elements, and finally to any damaged Private Elements. If there is any insufficiency of proceeds, the Association shall allocate the cost of repair, replacement or reconstruction between the Common Elements, Limited Common Elements and Private Elements based on reliable and detailed estimates obtained by the Board from competent and qualified parties, and shall apportion the expense of damage not covered by the insurance proceeds among all of the Owners, in proportion to the respective costs of repair, replacement or reconstruction of the respective damaged Private Elements of Owners, to the extent of the deficiency relating thereto, next to the Owners whose Condominium Units are appurtenant to the damaged Limited Common Elements, in proportion to the Owners' respective Allocated Interests in such damaged Limited Common Elements, to the extent of the deficiency relating to such Limited Common Elements, and finally among all of the Owners, according to their respective Allocated Interests, to the extent of any deficiency relating to the Common Elements.

7.04 Repair and Restoration. Any Common Elements, Limited Common Elements or Private Elements for which insurance is required under this Declaration must be repaired or replaced promptly when damaged or destroyed except as provided in Section 35-8A-313(h) of the Act. The Association has exclusive authority to act for and on behalf of the Owners in connection with any such repair or replacement which is to be made substantially in accordance with the Condominium Plan, including, without limitation, obtaining estimates, retaining architects, contractors and engineers, collecting and disbursing insurance proceeds, directly or through an Insurance Trustee, assessing and collecting any insufficiency in insurance proceeds, and otherwise complying with the terms and provisions of Act, the Condominium Documents, and insurance policy provisions. If the Board proposes that the repair or replacement be done other than in substantial compliance with the Condominium Plan, then the plans and specifications for such work shall be subject to the approval of (i) the Owners of all of the damaged Condominium Units (ii) Owners having an aggregate Allocated Interest of not less than 75% and (iii) Eligible Mortgage Holders which represent at least 51% of the Mortgaged Units held by all of the Eligible Mortgage Holders.

7.05 Eminent Domain. If any part of the Common Elements, any Condominium Unit, or any part of a Condominium Unit is acquired by eminent domain, the proceedings and the use and distribution of the award shall be governed by § 35-8A-107 of the Act, subject to the following: (i) the adjustment to Allocated Interests in connection with the acquisition of part of a Condominium Unit under § 35-8A-107(b) of the Act shall be made on the basis of the floor area of the affected Condominium Unit which was taken, in comparison with such floor area of that Condominium Unit prior to the taking; (ii) any award attributable to the acquisition of Limited Common Elements may be allocated among the Owners to which such Limited Common Elements were appurtenant in proportion to the respective Allocated Interests of such Owners, or on such other basis as the Board shall determine to be appropriate; (iii) the Board, in its discretion, may establish and follow procedures in connection with the collection, use and disbursement of condemnation awards which are similar to those authorized hereinabove in the case of casualty insurance proceeds; and (iv) any proceeds received for taking of Common Elements (other than Limited Common Elements) may, at the option of the Board, be allocated and distributed to the Owners and/or Mortgage Holders pursuant to the Act, or may be deposited into the Association's operating account or reserve account to be applied to Common Expenses.

7.06 Mortgage Holder Rights. None of the provisions in this Article VII, or elsewhere in the Condominium Documents, shall be construed to give any priority to any Owner over such Owner's Mortgage Holder, if any, with respect to the distribution of any insurance proceeds, condemnation award or other sums.

## ARTICLE VIII

### TERMINATION OF THE CONDOMINIUM

#### 8.01 Destruction of the Condominium Property.

(a) Events Requiring Meeting of Members. The Board shall call a meeting of the members of the Association to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate the Declaration and remove the Condominium Property from the provisions of the Act, if the Board shall determine that (i) two-thirds (2/3) or more of the Condominium Units shall have been destroyed or substantially damaged by fire or other casualty (including condemnation); or (ii) the Condominium Property has been in existence in excess of forty (40) years and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete.

(b) Necessary Approvals. The termination of the Declaration and the removal of the Condominium Property from the provisions of the Act in connection with the conditions described in Section 8.01(a) is subject to the approval of 80% of the total allocated Owner votes in the Association and approval of the Mortgage Holders to the extent required under Section 6.01(e), after notice given as provided in Section 8.01(a).

8.02 Termination by Consent. Except as provided in Section 8.01 above, this Declaration may be terminated only upon the approval of 90% of the total allocated Owner votes in the Association and approval of the Mortgage Holders under Section 6.01(e).

8.03 Association's Appointment. The Association is hereby appointed as attorney-in-fact for each Owner for the purpose of representing such Owners in any proceeding, negotiation, settlement or agreement arising from or required to implement the termination of this Declaration under Sections 8.01 and 8.02 above.

8.04 Delivery of Possession. Upon termination of this Declaration, the Owners of all Condominium Units still inhabitable shall within sixty (60) days, deliver possession of their respective Condominium Units to the Association. Upon such delivery of possession, the Owners of such Condominium Units and their respective Mortgage Holders, as their interests may appear, shall become entitled to participate proportionately together with the Owners of any uninhabitable Condominium Units in the distribution of proceeds in the possession of the Association or the Insurance Trustee.

## ARTICLE IX

### AMENDMENTS

9.01 Amendments by Developer. Without limiting the rights of the Developer to alter the Condominium Plan as described in Section 2.10 above, the Developer reserves the right to amend the Condominium Documents as provided below.

(a) Amendments to By-Laws. The Developer reserves the right to amend the By-Laws at any time during the Period of Developer Control.

(b) Lender Requirements. The Developer reserves the right at any time to amend this Declaration, without the consent of other Owners, as required to meet Secondary Lender Requirements; provided that any such amendments shall not materially affect the rights of the Owners, the value of their Condominium Unit, or the Allocated Interests of any Owner who does not approve any such amendment.

(c) Other Amendments to the Declaration. The Developer reserves the right to amend this Declaration so long as there is no Unit Owner other than the Developer.

9.02 Amendments by Unit Owners. As such time as there is an Owner other than the Developer, then, in addition to the amendments permitted under Section 9.01 above, this Declaration may be amended as hereafter provided:

(a) Amendment by Approval. A proposal to amend this Declaration may be considered at any meeting of the members of the Association called for that purpose in accordance with the provisions of the By-Laws. Any such amendment shall be subject to (i) Section 9.02(b) below; (ii) the approval of at least 67% of the total allocated Owner votes in the Association; and (iii) any approval required under Section 6.01(e).

(b) Certain Limitations. No amendment to the Declaration under Section 9.02(b) shall (i) change any Condominium Unit, its Allocated Interest or voting rights, without the prior written approval of the Owner or Owners so affected and their Mortgage Holders; or (ii) change, impair or prejudice the rights of Developer or change the provisions of this Declaration with respect to the Developer's rights hereunder without Developer's prior written approval.

9.03 Effectiveness of Amendments. A copy of each amendment so adopted shall be certified by the President (or a Vice President) and the Secretary (or Assistant Secretary) of the Association as having been duly adopted, and shall be effective when recorded in the Probate Office.

## ARTICLE X

### MANDATORY BINDING ARBITRATION

10.01 General Agreement. Any claim or dispute of any kind or nature among the Association, Developer and Owners arising out of or relating in any manner to the Condominium Documents or Condominium (herein a "Dispute") shall be decided by binding arbitration in accordance with the provisions of this Agreement.

10.02 Arbitration Procedures. Any arbitration under this Declaration shall be conducted under the following procedures:

(a) General Rules. The arbitration shall be conducted in accordance with the then current rules of the American Arbitration Association (the "Association"), to the extent that such rules do not conflict with any provision of this Agreement. Neither party shall institute any arbitration proceedings unless, at least five (5) business days prior thereto, such party has furnished notice of intent to do so and a detailed statement as to the basis for such proceedings. The arbitration will be held at the regional office of the Association located closest to Birmingham, Alabama. The arbitration will be held before a single individual (the "Arbitrator") chosen from a panel of persons knowledgeable in the field of residential construction and development. If the parties fail to reach mutual agreement concerning the selection of the Arbitrator within five (5) business days after the proceeding is instituted, then the Arbitrator shall be designated by the Association.

(b) Discovery Procedures. Each party shall serve upon the other any written requests for information or documents, in connection with the Dispute, within the first twenty (20) days after the arbitration proceedings are instituted. Any such requests for such information or documents must be satisfied or objected to within ten (10) business days from the date of service unless the requesting party grants an extension. Each party must serve the others with copies of documents in their possession, and the identity of witnesses, which such party intends to introduce or present at the arbitration hearing, at least five (5) business days prior to the date of the arbitration hearing. Failure to do so will result in the exclusion of such documents or witnesses from the arbitration. Documents or identification of witnesses intended for use at cross-examination or rebuttal, however, are not required to be served. The parties shall be entitled to further discovery rights only as the Arbitrator may order under the circumstances.

(c) Identification of Claims. Any Dispute may be composed of multiple, separate claims which, although generally related, involve separate and distinguishable issues of fact or law. Each party shall, through notice to the Arbitrator and to the other party given not less than ten (10) business days before the commencement of the arbitration hearing, identify the separate claims (collectively the "Claims") which the party has determined to be a part of the Dispute.

(d) Final Proposals. Not less than three (3) business days before commencement of the arbitration hearing, each party shall submit to the Arbitrator and to the other party its final proposal (a "Final Proposal") to resolve each Claim. Each Final Proposal will state a sum certain

for each Claim involving the payment of a liquidated sum, and/or will set forth a specific and detailed proposal for each Claim that does not involve the payment of a liquidated sum.

(e) Resolution of Claims. The Arbitrator will have the power, acting alone, to combine Claims which he or she determines to be indistinguishable as a matter of fact or law. The Arbitrator will resolve each Claim by approving the Final Proposal of one of the parties, and will have no authority to compromise between the Final Proposals with respect to any particular Claim. In the event only one party submits a Final Proposal with respect to a particular Claim within the time period established under Section 10.2(d) above, then such Final Proposal shall be deemed to have been approved by the Arbitrator in resolution of such particular Claim. Any award of damages pursuant to such arbitration will be included in a written decision which will state the reasons upon which the award was based. The award, order or judgment pursuant to the arbitration will be deemed final and may be entered and enforced in any court of competent jurisdiction.

(f) Arbitration Costs. The party whose Final Proposal is approved shall be entitled to recover its arbitration fees and charges, attorney's fees, paralegal charges, expert witness fees, consulting fees and other costs reasonably and actually incurred and payable to third parties (collectively "Arbitration Costs") in the arbitration, with respect to the Claim related to such Final Proposal, and such Arbitration Costs may be included in the award of the Arbitrator or in a subsequent award of Arbitration Costs issued by the Arbitrator. If a party prevails with respect to some Claims and loses as to others, the Arbitrator will allocate Arbitration Costs among the Claims.

(g) Temporary Relief. In order to prevent irreparable harm, the Arbitrator may grant temporary injunctive or other equitable relief. Notwithstanding anything to the contrary in this Agreement, in the event of any alleged violation of a party's property or equitable rights, that party may seek temporary injunctive relief from any court of competent jurisdiction pending appointment of an Arbitrator. The party requesting such relief shall simultaneously file a demand for arbitration of the Dispute and shall request that the Association proceed under its rules for expedited proceedings.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

11.01 Rights and Powers of Successors and Assignees. The rights and powers reserved to or exercisable by the Developer under the Condominium Documents or the Act may be exercised by any successor or assignee of the Developer (i) who acquires title from the Developer by foreclosure or other judicial sale or deed in lieu of foreclosure, or (ii) which is a Designated Successor.

11.02 Headings. The captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

11.03 Gender and Number. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

11.04 Exhibits. All of the Exhibits attached to this Declaration are integral parts hereof and are incorporated by this reference.

11.05 Invalidity and Severability. It is the intention of the Developer that the provisions of this Declaration are severable so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

11.06 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project.

11.07 Rights of Action. The Association, and any aggrieved Owner, shall have a right of action against any Owner who fails to comply in all material respects with the provisions of the Condominium Documents or with the decisions made by the Association pursuant to the terms thereof or pursuant to provisions of the Act which are not inconsistent therewith. In addition, the respective Owners shall each have a right of action against the Association in order to enforce the terms and provisions of the Condominium Documents. Each of the foregoing rights of action shall, to the fullest extent permitted by applicable law and Secondary Lender Requirements, be exercised in an arbitration proceeding pursuant to Article X.

11.08 Abatement of Violations. Violation of any Rule or Regulation, or the breach of any provisions of the Condominium Documents, shall give the Developer, the Association or any Owner the right to enjoin, abate or remedy by appropriate legal proceedings the continuance of any such breach pending a resolution of any dispute related thereto under binding arbitration pursuant to Article X.

11.09 Waiver of Provisions. Failure of the Association to insist in any one or more instances upon the strict performance of any of the provisions of the Condominium Documents, to exercise any right or option therein contained, or serve any notice or institute any action or arbitration shall not be construed as a waiver or a relinquishment from future performance of such a provision. The receipt and retention by the Association of any Assessment, or portion thereof, from any owner with knowledge of the breach by such Owner of any provision of any Condominium Documents shall not be deemed to be a waiver of such breach. No waiver by the Association of any provision of any of the Condominium Documents shall be deemed to have been made or to have occurred unless expressed in writing and signed by a Person authorized to do so by the Board in accordance with the By-Laws.

11.10 Implied Consents. In connection with any approval required under any of the Condominium Documents, any proposed amendment thereto, or any proposed consent or waiver thereunder, the Developer, or the Board after first being authorized pursuant to the By-Laws, may

give notice of such proposal, by certified or registered mail, with a return, receipt requested, to any one or more of the Owners or Mortgage Holders. Provided that any such notice so given includes a conspicuous legend stating that the particular approval, amendment, consent or waiver requested and described therein is subject to the implied consent provisions herein contained, with a specific reference to this Section 11.10, each Person which receives such notice and fails to submit a response thereto within thirty (30) days after receipt shall be conclusively deemed to have approved the request or proposal so described, with the same effect as if such Person had affirmatively voted in favor of the requested matter to the full extent that such Person is entitled to vote with respect thereto under any provisions of the Condominium Documents.

IN WITNESS WHEREOF, the Developer has hereunto set its signature and seal on the day and year first above written.

**HORIZON CONDOMINIUM DEVELOPMENT,  
INC.,** an Alabama corporation

By:   
Its: \_\_\_\_\_

STATE OF Alabama  
Shelby COUNTY )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as a \_\_\_\_\_ of Horizon Condominium Development, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said

instrument, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation as of the date first set forth above.

Given under my hand this the 19<sup>th</sup> day of September, 2001.

Linda L. Mabe  
NOTARY PUBLIC  
My Commission Expires: 8-4-04

(SEAL)

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**JOINDER OF MORTGAGEE**

**Protective Life Insurance Company**, a Tennessee corporation ("Protective"), is the owner and holder of the indebtedness secured by the following instruments (collectively, the "Mortgage Documents") executed by **Morning Sun Villas, L.L.C.**:

- Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement to Compass Bank dated December 18, 1998 recorded in Instrument 1998/51183; assigned to Protective Life Insurance Company by Assignment of Loan Documents dated January 10, 2001 recorded in Instrument No. 2001/01349;
- Collateral Assignment of Contract Documents to Compass Bank dated December 18, 1998 recorded in Instrument 1998/51184; assigned to Protective Life Insurance Company by Assignment of Loan Documents as aforesaid;
- Amended and Restated Mortgage and Security Agreement to Protective Life Insurance Company dated January 11, 2001 recorded in Instrument No. 2001-01350;
- Assignment of Rents and Leases to Protective Life Insurance Company dated January 11, 2001 recorded in Instrument No. 2001-01351;
- UCC Financing Statement recorded in Instrument No. 2001-01352

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Protective hereby joins in the execution of the foregoing Declaration of Condominium for the purpose of giving its consent to and approval of said Declaration and subjecting and subordinating its rights under the aforesaid Mortgage Documents to the covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations on title created by the Act and under the Condominium Documents referred to in the Declaration

IN WITNESS WHEREOF, Protective has caused this Joinder to be executed by its duly authorized corporate officer, on this 19<sup>th</sup> day of September, 2001.

**PROTECTIVE LIFE INSURANCE COMPANY**

By: Charles M. Prior  
Charles M. Prior, Vice President

STATE OF ALABAMA       )  
JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Charles M. Prior**, whose name as Vice President of Protective Life Insurance Company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed the same voluntarily on the day the same bears date for and as the act of said corporation.

GIVEN under my hand and official seal this the 19<sup>th</sup> day of September, 2001.

Nancy Christman Clarke [SEAL]  
Notary Public  
My Commission Expires 9-29-2002

**JOINDER OF MORTGAGEE**

Morning Sun Villas, LLC, an Alabama limited liability company ("MSV"), is the owner and holder of the indebtedness secured by Purchase Money Junior Mortgage and Security Agreement executed by Horizon Condominium Development, Inc., an Alabama corporation in favor of MSV dated September 19, 2001 recorded in the Probate Office of Shelby County, Alabama as Instrument 2001-\_\_\_\_\_ (the "Mortgage"). For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MSV hereby joins in the execution of the foregoing Declaration of Condominium for the purpose of giving its consent to and approval of said Declaration and subjecting and subordinating its rights under the Mortgage to the covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations on title created by the Act and under the Condominium Documents referred to in the Declaration.

IN WITNESS WHEREOF, Morning Sun Villas, L.L.C. has caused this Joinder to be executed by its duly authorized corporate officer, on this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**MORNING SUN VILLAS, L.L.C.**

By \_\_\_\_\_  
Jack Fiorella III, Sole Member

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jack Fiorella III, whose name as the Sole Member of Morning Sun Villas, L.L.C., an Alabama limited liability company is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date for and as the act of said limited liability company.

GIVEN under my hand and official seal this the 19th day of September, 2001.

[Signature]  
Notary Public

[SEAL]

My Commission Expires 8-4-04

## EXHIBIT A

The property being conveyed is one and the same as that property conveyed in Instrument 1994-13576, 1995-32174 and 1998-51182 and the entire purchase price is being paid from a purchase money mortgage being filed contemporaneously herewith.

A parcel of land situated in the East half of the Northeast quarter of Section 1, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at a capped iron pipe found at the Northeast corner of said Section and run thence in a Southerly direction along the East line thereof for a distance of 436.03 feet to a point located in a curve to the right in the Northwesterly right of way line of Meadow Ridge Road, said curve being concave to the Northwest, having a radius of 1598.48 feet, a central angle of  $4^{\circ}10'47''$  and a chord which forms an interior or counterclockwise angle of  $120^{\circ}10'53''$  with the preceding course; thence turn an angle to the right and run in a Southwesterly direction with said proposed right of way line and along the arc of said curve for a distance of 116.61 feet to the end of said curve; thence continue to run with said proposed right of way line in a Southwesterly direction along a line tangent to said curve for a distance of 337.88 feet to the beginning of a curve to the left, said curve being concave to the Southeast, having a radius of 827.77 feet and subtending a central angle of  $33^{\circ}45'00''$ ; thence continue to run with said proposed right of way line in a Southwesterly direction along the arc of said curve for a distance of 487.60 feet to a point of reverse curvature located at the beginning of a curve to the right; said curve being concave to the Northwest, having a radius of 966.13 feet, and subtending a central angle of  $18^{\circ}15'00''$ ; thence continue to run with said proposed right of way line in a Southwesterly direction along the arc of said curve for a distance of 307.73 feet to the end of said curve; thence turn an angle to the right of  $67^{\circ}07'30''$ , as measured from the chord of said curve and, leaving said proposed right of way line, run in a Northwesterly direction for a distance of 101.95 feet; thence turn an angle to the left of  $90^{\circ}00'$  and run in a Southwesterly direction for a distance of 10.00 feet; thence turn an angle to the right of  $90^{\circ}00'$  and run in a Northwesterly direction for a distance of 20.00 feet; thence turn an angle to the right of  $90^{\circ}00'$  and run in a Northeasterly direction for a distance of 10.00 feet; thence turn an angle to the left of  $90^{\circ}00'$  and run in a Northwesterly direction for a distance of 294.00 feet to a point located in the West line of the Northeast quarter of the Northeast quarter of the aforesaid Section 1; thence turn an angle to the right of  $75^{\circ}38'01''$  and run in a Northerly direction along said West line of said quarter-quarter section for a distance of 973.33 feet; thence turn an angle to the right of  $65^{\circ}23'12''$  and run in a Northeasterly direction for a distance of 362.69 feet; thence turn an angle to the left of  $65^{\circ}23'12''$  and run in a Northerly direction for a distance of 50.00 feet; thence turn an angle to the right of  $92^{\circ}17'02''$  and run in an Easterly direction along the North line of said quarter-quarter section for a distance of 997.59 feet to the point of beginning.

### PARCEL II:

Together with the right accruing to the subject property of the following:

1. Storm sewer and drainage easement between Daniel U.S. Properties, Ltd., and Daniel Properties XV dated 8-1-86, recorded in Real Record 86, page 349, in the Probate Office of Shelby County, Alabama.
2. Sewer line easement and connection agreement between Daniel U.S. Properties, Ltd., and Daniel Properties XV dated 9-23-85, recorded in Real Record 43, page 611, in the Probate Office of Shelby County, Alabama, as modified by that certain First Modification to Sewer Line Easement and Connection Agreement dated 8-14-86, recorded in Real Record 86, page 355, aforesaid records, as further modified by that certain quitclaim deed with reservation of rights dated 1-31-94, recorded in Instrument 1994-03407, aforesaid records.
3. Quitclaim deed with reservation of rights dated 1-31-94, recorded in Instrument 1994-03407, in the Probate Office of Shelby County, Alabama.



HORIZON CONDOMINIUMS

| Count | Bldg # | Unit # | Lower Vertical Boundary | Upper Vertical Boundary | Horizontal Boundary | Type      |
|-------|--------|--------|-------------------------|-------------------------|---------------------|-----------|
| 1     | 100    | 101    | 780.52                  | 788.52                  |                     | Daybreak  |
| 2     |        | 102    | 789.98                  | 797.98                  |                     | Daybreak  |
| 3     |        | 103    | 778.63                  | 786.63                  |                     | Daybreak  |
| 4     |        | 104    | 787.83                  | 795.83                  |                     | Daybreak  |
| 5     | 200    | 201    | 786.16                  | 794.16                  |                     | Dusk      |
| 6     |        | 202    | 795.54                  | 803.54                  |                     | Daybreak  |
| 7     |        | 203    | 804.69                  | 812.69                  |                     | Daybreak  |
| 8     |        | 204    | 782.21                  | 790.21                  |                     | Dusk      |
| 9     |        | 205    | 791.48                  | 799.48                  |                     | Daybreak  |
| 10    |        | 206    | 800.69                  | 808.69                  |                     | Daybreak  |
| 11    | 210    | 211    | 800.40                  | 808.40                  |                     | Dusk      |
| 12    |        | 212    | 809.74                  | 817.74                  |                     | Daybreak  |
| 13    |        | 213    | 818.96                  | 826.96                  |                     | Daybreak  |
| 14    |        | 214    | 796.41                  | 804.41                  |                     | Dusk      |
| 15    |        | 215    | 805.71                  | 813.71                  |                     | Daybreak  |
| 16    |        | 216    | 814.97                  | 822.97                  |                     | Daybreak  |
| 17    | 300    | 301    | 807.41                  | 815.41                  |                     | Dusk      |
| 18    |        | 302    | 816.71                  | 824.71                  |                     | Daybreak  |
| 19    |        | 303    | 825.93                  | 833.93                  |                     | Daybreak  |
| 20    |        | 304    | 803.38                  | 811.38                  |                     | Dusk      |
| 21    |        | 305    | 812.72                  | 820.72                  |                     | Daybreak  |
| 22    |        | 306    | 821.96                  | 829.96                  |                     | Daybreak  |
| 23    | 400    | 401    | 808.20                  | 816.20                  |                     | Sunset    |
| 24    |        | 402    | 817.31                  | 825.31                  |                     | Sunset    |
| 25    |        | 403    | 817.31                  | 825.31                  |                     | Sunset    |
| 26    |        | 404    | 826.60                  | 834.60                  |                     | Sunset    |
| 27    |        | 405    | 826.60                  | 834.60                  |                     | Sunset    |
| 28    |        | 406    | 810.31                  | 818.31                  |                     | Nightfall |
| 29    |        | 407    | 810.31                  | 818.31                  |                     | Nightfall |
| 30    |        | 408    | 819.49                  | 827.49                  |                     | Nightfall |
| 31    |        | 409    | 819.49                  | 827.49                  |                     | Nightfall |
| 32    |        | 410    | 819.49                  | 827.49                  |                     | Nightfall |
| 33    |        | 411    | 819.49                  | 827.49                  |                     | Nightfall |
| 34    |        | 412    | 828.72                  | 836.72                  |                     | Nightfall |
| 35    |        | 413    | 828.72                  | 836.72                  |                     | Nightfall |
| 36    |        | 414    | 828.72                  | 836.72                  |                     | Nightfall |
| 37    |        | 415    | 828.72                  | 836.72                  |                     | Nightfall |
| 38    |        | 416    | 808.20                  | 816.20                  |                     | Sunset    |
| 39    |        | 417    | 817.58                  | 825.58                  |                     | Sunset    |
| 40    |        | 418    | 817.58                  | 825.58                  |                     | Sunset    |
| 41    |        | 419    | 826.75                  | 834.75                  |                     | Sunset    |
| 42    |        | 420    | 826.75                  | 834.75                  |                     | Sunset    |
| 43    | 500    | 501    | 813.51                  | 821.51                  |                     | Dusk      |
| 44    |        | 502    | 822.71                  | 830.71                  |                     | Daybreak  |
| 45    | Susan  | 503    | 831.94                  | 839.94                  |                     | Daybreak  |
| 46    |        | 504    | 810.81                  | 818.81                  |                     | Dusk      |
| 47    |        | 505    | 820.64                  | 828.64                  |                     | Daybreak  |

HORIZON CONDOMINIUMS

| Count | Bldg # | Unit # | Lower Vertical Boundary | Upper Vertical Boundary | Horizontal Boundary | Type        |
|-------|--------|--------|-------------------------|-------------------------|---------------------|-------------|
| 48    |        | 506    | 829.30                  | 837.30                  |                     | Daybreak    |
|       |        |        |                         |                         |                     |             |
| 49    | 600    | 601    | 810.16                  | 818.16                  |                     | Sunrise     |
| 50    |        | 602    | 819.98                  | 827.98                  |                     | Dawn        |
| 51    |        | 603    | 819.98                  | 827.98                  |                     | Sunrise     |
| 52    |        | 604    | 828.80                  | 836.80                  |                     | Sunrise Dlx |
| 53    |        | 605    | 810.30                  | 818.30                  |                     | Sunrise     |
| 54    |        | 606    | 819.98                  | 827.98                  |                     | Dawn        |
| 55    |        | 607    | 819.98                  | 827.98                  |                     | Sunrise     |
| 56    |        | 608    | 828.80                  | 836.80                  |                     | Sunrise Dlx |
|       |        |        |                         |                         |                     |             |
| 57    | 700    | 701    | 807.21                  | 815.21                  |                     | Sunrise     |
| 58    |        | 702    | 816.65                  | 824.65                  |                     | Dawn        |
| 59    |        | 703    | 816.65                  | 824.65                  |                     | Sunrise     |
| 60    |        | 704    | 825.85                  | 833.85                  |                     | Sunrise Dlx |
| 61    |        | 705    | 807.13                  | 815.13                  |                     | Sunrise     |
| 62    |        | 706    | 816.60                  | 824.60                  |                     | Dawn        |
| 63    |        | 707    | 816.60                  | 824.60                  |                     | Sunrise     |
| 64    |        | 708    | 826.04                  | 834.04                  |                     | Sunrise Dlx |
|       |        |        |                         |                         |                     |             |
| 65    | 800    | 801    | 801.02                  | 809.02                  |                     | Sunset      |
| 66    |        | 802    | 810.51                  | 818.51                  |                     | Sunset      |
| 67    |        | 803    | 810.51                  | 818.51                  |                     | Sunset      |
| 68    |        | 804    | 819.76                  | 827.76                  |                     | Sunset      |
| 69    |        | 805    | 819.76                  | 827.76                  |                     | Sunset      |
| 70    |        | 806    | 804.63                  | 812.63                  |                     | Nightfall   |
| 71    |        | 807    | 804.63                  | 812.63                  |                     | Nightfall   |
| 72    |        | 808    | 813.89                  | 821.89                  |                     | Nightfall   |
| 73    |        | 809    | 813.89                  | 821.89                  |                     | Nightfall   |
| 74    |        | 810    | 813.89                  | 821.89                  |                     | Nightfall   |
| 75    |        | 811    | 813.89                  | 821.89                  |                     | Nightfall   |
| 76    |        | 812    | 823.08                  | 831.08                  |                     | Nightfall   |
| 77    |        | 813    | 823.08                  | 831.08                  |                     | Nightfall   |
| 78    |        | 814    | 823.08                  | 831.08                  |                     | Nightfall   |
| 79    |        | 815    | 823.08                  | 831.08                  |                     | Nightfall   |
| 80    |        | 816    | 809.91                  | 817.91                  |                     | Sunset      |
| 81    |        | 817    | 819.23                  | 827.23                  |                     | Sunset      |
| 82    |        | 818    | 819.23                  | 827.23                  |                     | Sunset      |
|       |        |        |                         |                         |                     |             |
| 83    | 900    | 901    | 786.95                  | 794.95                  |                     | Dusk        |
| 84    |        | 902    | 796.12                  | 804.12                  |                     | Daybreak    |
| 85    |        | 903    | 805.47                  | 813.47                  |                     | Daybreak    |
| 86    |        | 904    | 789.68                  | 797.68                  |                     | Dusk        |
| 87    |        | 905    | 789.68                  | 797.68                  |                     | Dusk        |
| 88    |        | 906    | 798.06                  | 806.06                  |                     | Daybreak    |
| 89    |        | 907    | 798.06                  | 806.06                  |                     | Daybreak    |
| 90    |        | 908    | 808.07                  | 816.07                  |                     | Daybreak    |
| 91    |        | 909    | 808.07                  | 816.07                  |                     | Daybreak    |
| 92    |        | 910    | 793.63                  | 801.63                  |                     | Dusk        |
| 93    |        | 911    | 802.89                  | 810.89                  |                     | Daybreak    |
| 94    |        | 912    | 812.12                  | 820.12                  |                     | Daybreak    |

HORIZON CONDOMINIUMS

| Count | Bldg # | Unit # | Lower Vertical Boundary | Upper Vertical Boundary | Horizontal Boundary | Type        |
|-------|--------|--------|-------------------------|-------------------------|---------------------|-------------|
| 95    | 1000   | 1001   | 777.35                  | 785.35                  |                     | Sunrise     |
| 96    |        | 1002   | 786.72                  | 794.72                  |                     | Dawn        |
| 97    |        | 1003   | 786.72                  | 794.72                  |                     | Sunrise     |
| 98    |        | 1004   | 795.57                  | 803.57                  |                     | Sunrise Dlx |
| 99    |        | 1005   | 777.57                  | 785.57                  |                     | Sunrise     |
| 100   |        | 1006   | 786.79                  | 794.79                  |                     | Dawn        |
| 101   |        | 1007   | 786.79                  | 794.79                  |                     | Sunrise     |
| 102   |        | 1008   | 795.84                  | 803.84                  |                     | Sunrise Dlx |
| 103   | 1100   | 1101   | 759.91                  | 767.91                  |                     | Dusk        |
| 104   |        | 1102   | 769.06                  | 777.06                  |                     | Daybreak    |
| 105   |        | 1103   | 778.30                  | 786.30                  |                     | Daybreak    |
| 106   |        | 1104   | 764.75                  | 772.75                  |                     | Dusk        |
| 107   |        | 1105   | 764.75                  | 772.75                  |                     | Dusk        |
| 108   |        | 1106   | 773.94                  | 781.94                  |                     | Daybreak    |
| 109   |        | 1107   | 773.94                  | 781.94                  |                     | Daybreak    |
| 110   |        | 1108   | 783.14                  | 791.14                  |                     | Daybreak    |
| 111   |        | 1109   | 783.14                  | 791.14                  |                     | Daybreak    |
| 112   |        | 1110   | 768.67                  | 776.67                  |                     | Dusk        |
| 113   |        | 1111   | 778.02                  | 786.02                  |                     | Daybreak    |
| 114   |        | 1112   | 787.20                  | 795.20                  |                     | Daybreak    |
| 115   | 1200   | 1201   | 739.48                  | 747.48                  |                     | Nightfall   |
| 116   |        | 1202   | 748.44                  | 756.44                  |                     | Nightfall   |
| 117   |        | 1203   | 748.44                  | 756.44                  |                     | Nightfall   |
| 118   |        | 1204   | 757.69                  | 765.69                  |                     | Nightfall   |
| 119   |        | 1205   | 757.69                  | 765.69                  |                     | Nightfall   |
| 120   |        | 1206   | 737.49                  | 745.49                  |                     | Nightfall   |
| 121   |        | 1207   | 746.66                  | 754.66                  |                     | Nightfall   |
| 122   |        | 1208   | 746.66                  | 754.66                  |                     | Nightfall   |
| 123   |        | 1209   | 755.77                  | 763.77                  |                     | Nightfall   |
| 124   |        | 1210   | 755.77                  | 763.77                  |                     | Nightfall   |
| 125   | 1300   | 1301   | 743.91                  | 751.91                  |                     | Sunset      |
| 126   |        | 1302   | 753.20                  | 761.20                  |                     | Sunset      |
| 127   |        | 1303   | 753.20                  | 761.20                  |                     | Sunset      |
| 128   |        | 1304   | 740.52                  | 748.52                  |                     | Nightfall   |
| 129   |        | 1305   | 740.52                  | 748.52                  |                     | Nightfall   |
| 130   |        | 1306   | 749.80                  | 757.80                  |                     | Nightfall   |
| 131   |        | 1307   | 749.80                  | 757.80                  |                     | Nightfall   |
| 132   |        | 1308   | 749.80                  | 757.80                  |                     | Nightfall   |
| 133   |        | 1309   | 749.80                  | 757.80                  |                     | Nightfall   |
| 134   |        | 1310   | 759.04                  | 767.04                  |                     | Nightfall   |
| 135   |        | 1311   | 759.04                  | 767.04                  |                     | Nightfall   |
| 136   |        | 1312   | 759.04                  | 767.04                  |                     | Nightfall   |
| 137   |        | 1313   | 759.04                  | 767.04                  |                     | Nightfall   |
| 138   |        | 1314   | 737.23                  | 745.23                  |                     | Sunset      |
| 139   |        | 1315   | 746.48                  | 754.48                  |                     | Sunset      |
| 140   |        | 1316   | 746.48                  | 754.48                  |                     | Sunset      |
| 141   |        | 1317   | 755.74                  | 763.74                  |                     | Sunset      |
| 142   |        | 1318   | 755.74                  | 763.74                  |                     | Sunset      |

HORIZON CONDOMINIUMS

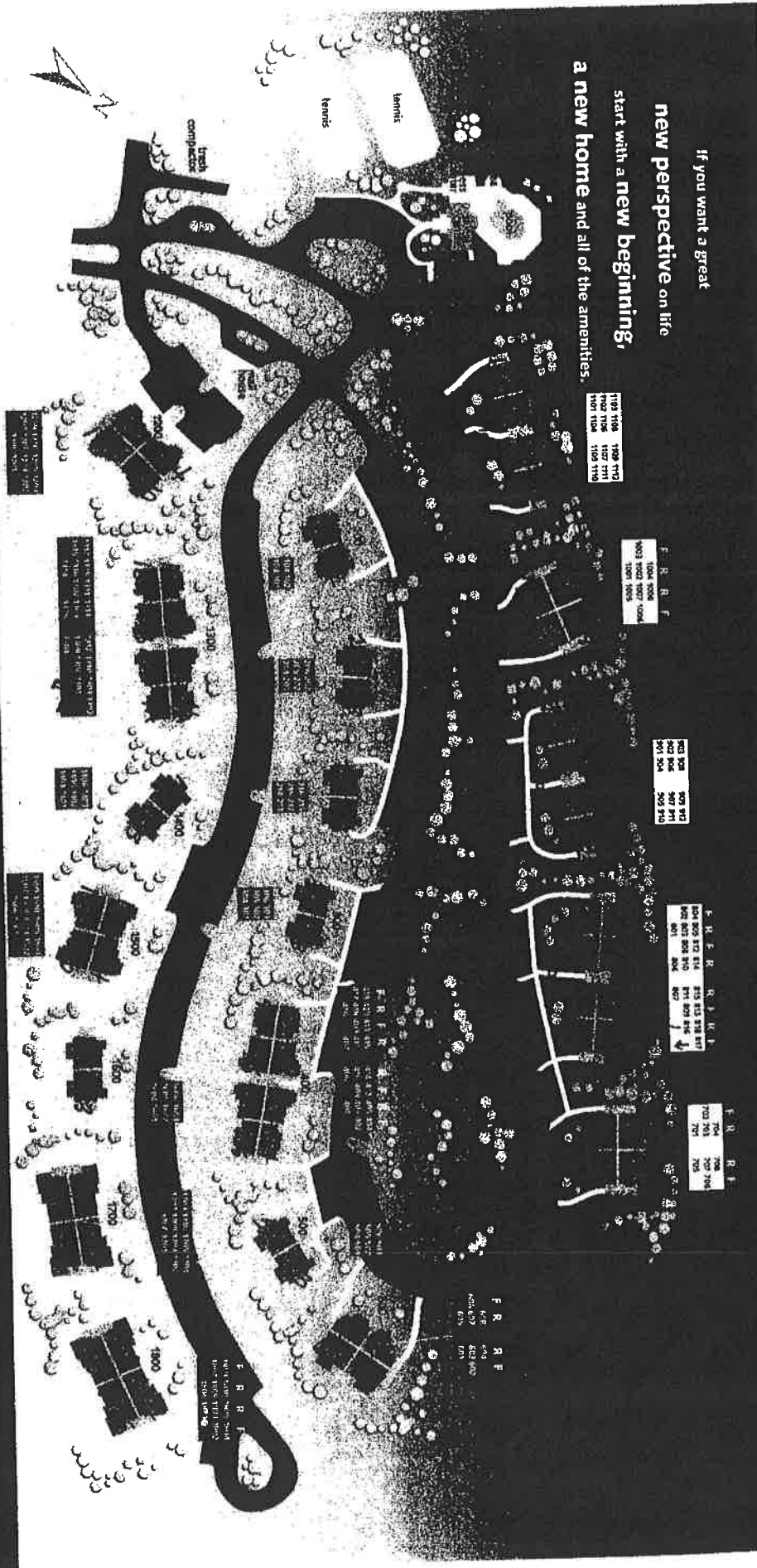
| Count | Bldg # | Unit # | Lower Vertical Boundary | Upper Vertical Boundary | Horizontal Boundary | Type      |
|-------|--------|--------|-------------------------|-------------------------|---------------------|-----------|
| 143   | 1400   | 1401   | 753.76                  | 761.76                  |                     | Dusk      |
| 144   |        | 1402   | 763.03                  | 771.03                  |                     | Daybreak  |
| 145   |        | 1403   | 772.21                  | 780.21                  |                     | Daybreak  |
| 146   |        | 1404   | 751.61                  | 759.61                  |                     | Dusk      |
| 147   |        | 1405   | 761.18                  | 769.18                  |                     | Daybreak  |
| 148   |        | 1406   | 770.28                  | 778.28                  |                     | Daybreak  |
|       |        |        |                         |                         |                     |           |
| 149   | 1500   | 1501   | 759.90                  | 767.90                  |                     | Nightfall |
| 150   |        | 1502   | 769.21                  | 777.21                  |                     | Nightfall |
| 151   |        | 1503   | 769.21                  | 777.21                  |                     | Nightfall |
| 152   |        | 1504   | 778.63                  | 786.63                  |                     | Nightfall |
| 153   |        | 1505   | 778.63                  | 786.63                  |                     | Nightfall |
| 154   |        | 1506   | 757.97                  | 765.97                  |                     | Nightfall |
| 155   |        | 1507   | 767.25                  | 775.25                  |                     | Nightfall |
| 156   |        | 1508   | 767.25                  | 775.25                  |                     | Nightfall |
| 157   |        | 1509   | 776.49                  | 784.49                  |                     | Nightfall |
| 158   |        | 1510   | 776.49                  | 784.49                  |                     | Nightfall |
|       |        |        |                         |                         |                     |           |
| 159   | 1600   | 1601   | 762.60                  | 770.60                  |                     | Dusk      |
| 160   |        | 1602   | 771.78                  | 779.78                  |                     | Daybreak  |
| 161   |        | 1603   | 781.02                  | 789.02                  |                     | Daybreak  |
| 162   |        | 1604   | 760.54                  | 768.54                  |                     | Dusk      |
| 163   |        | 1605   | 769.81                  | 777.81                  |                     | Daybreak  |
| 164   |        | 1606   | 778.97                  | 786.97                  |                     | Daybreak  |
|       |        |        |                         |                         |                     |           |
| 165   | 1700   | 1701   | 757.49                  | 765.49                  |                     | Twilight  |
| 166   |        | 1702   | 766.79                  | 774.79                  |                     | Twilight  |
| 167   |        | 1703   | 766.79                  | 774.79                  |                     | Twilight  |
| 168   |        | 1704   | 776.02                  | 784.02                  |                     | Twilight  |
| 169   |        | 1705   | 776.02                  | 784.02                  |                     | Twilight  |
| 170   |        | 1706   | 757.55                  | 765.55                  |                     | Twilight  |
| 171   |        | 1707   | 766.78                  | 774.78                  |                     | Twilight  |
| 172   |        | 1708   | 766.78                  | 774.78                  |                     | Twilight  |
| 173   |        | 1709   | 776.07                  | 784.07                  |                     | Twilight  |
| 174   |        | 1710   | 776.07                  | 784.07                  |                     | Twilight  |
|       |        |        |                         |                         |                     |           |
| 175   | 1800   | 1801   | 762.55                  | 770.55                  |                     | Twilight  |
| 176   |        | 1802   | 771.74                  | 779.74                  |                     | Twilight  |
| 177   |        | 1803   | 771.74                  | 779.74                  |                     | Twilight  |
| 178   |        | 1804   | 781.02                  | 789.02                  |                     | Twilight  |
| 179   |        | 1805   | 781.02                  | 789.02                  |                     | Twilight  |
| 180   |        | 1806   | 759.90                  | 767.90                  |                     | Twilight  |
| 181   |        | 1807   | 769.22                  | 777.22                  |                     | Twilight  |
| 182   |        | 1808   | 769.22                  | 777.22                  |                     | Twilight  |
| 183   |        | 1809   | 778.41                  | 786.41                  |                     | Twilight  |
| 184   |        | 1810   | 778.41                  | 786.41                  |                     | Twilight  |





Upper Level

If you want a great  
 new perspective on life  
 start with a new beginning,  
 a new home and all of the amenities.



Then add the trees.

A Private Condominium Residence  
 With More Than A View  
[www.horizoncondos.com](http://www.horizoncondos.com)

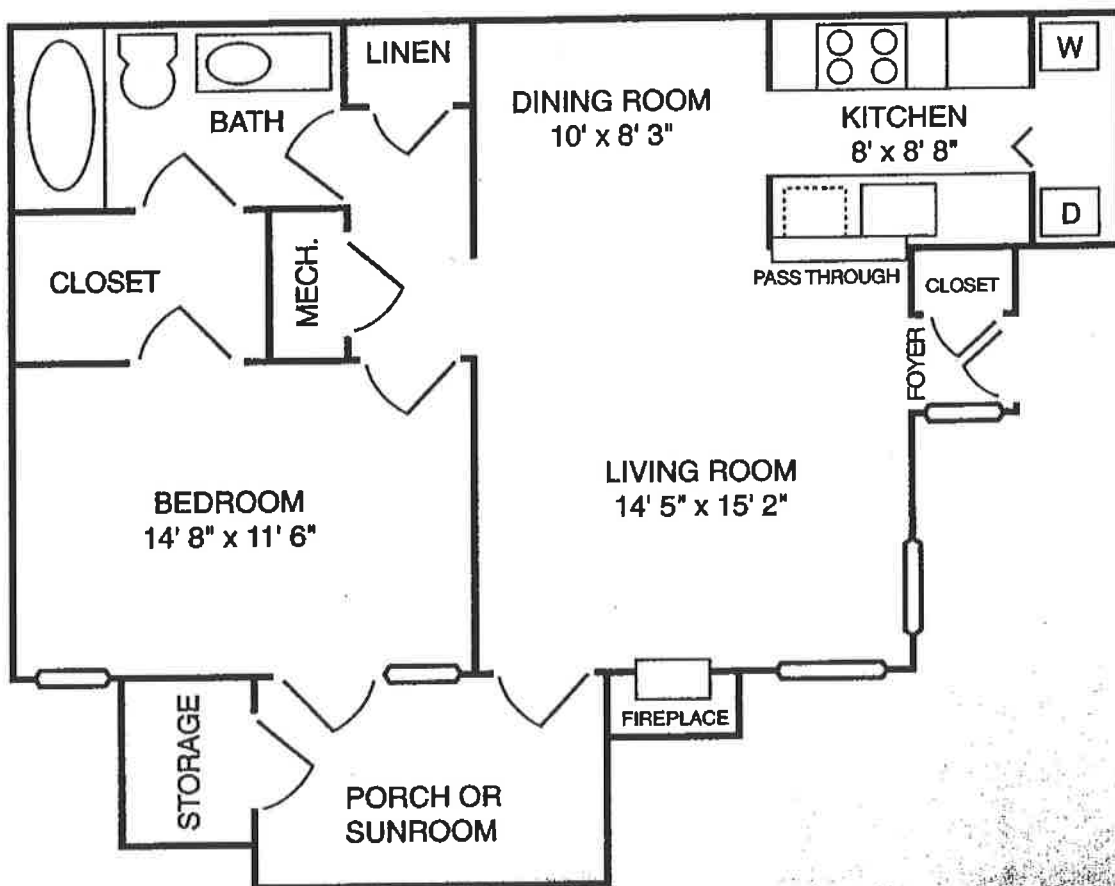
1 BR/1 BA  
Aprx. 854 Sq. Ft.

EXHIBIT B  
Page 9 of 15

A well-designed floorplan is what makes the Dawn model so unique. A superb great room arrangement creates a wide-open space between the large living room and dining room, providing an inviting area for entertaining. With the bright sunroom option, you can expand this area even more. Or you may opt for the open deck with French access doors. Dinner parties are easy to plan since the state-of-the-art kitchen with private laundry alcove lies adjacent to the dining and living area. The impressive master suite features French door access to the porch or sunroom. And an immense,

oversized closet adjoins the bedroom with private access to the main bath beyond.

Each of our homes features its own unique architectural elements—which may include a fireplace, built-in bookcases, kitchen pass-through, dining bar, French doors, and vaulted ceilings. Upgraded standard amenities, such as oak cabinetry, ceramic tile baths, a quarry tile foyer, additional storage off porch or sunroom, and energy-efficient, double-pane windows, are just a few of the extra touches at Horizon.



# SUNRISE

2 BR/2 BA

Aprx. 1,194 Sq. Ft. (std. shown)

Aprx. 1,289 Sq. Ft. (deluxe)

# HORIZON

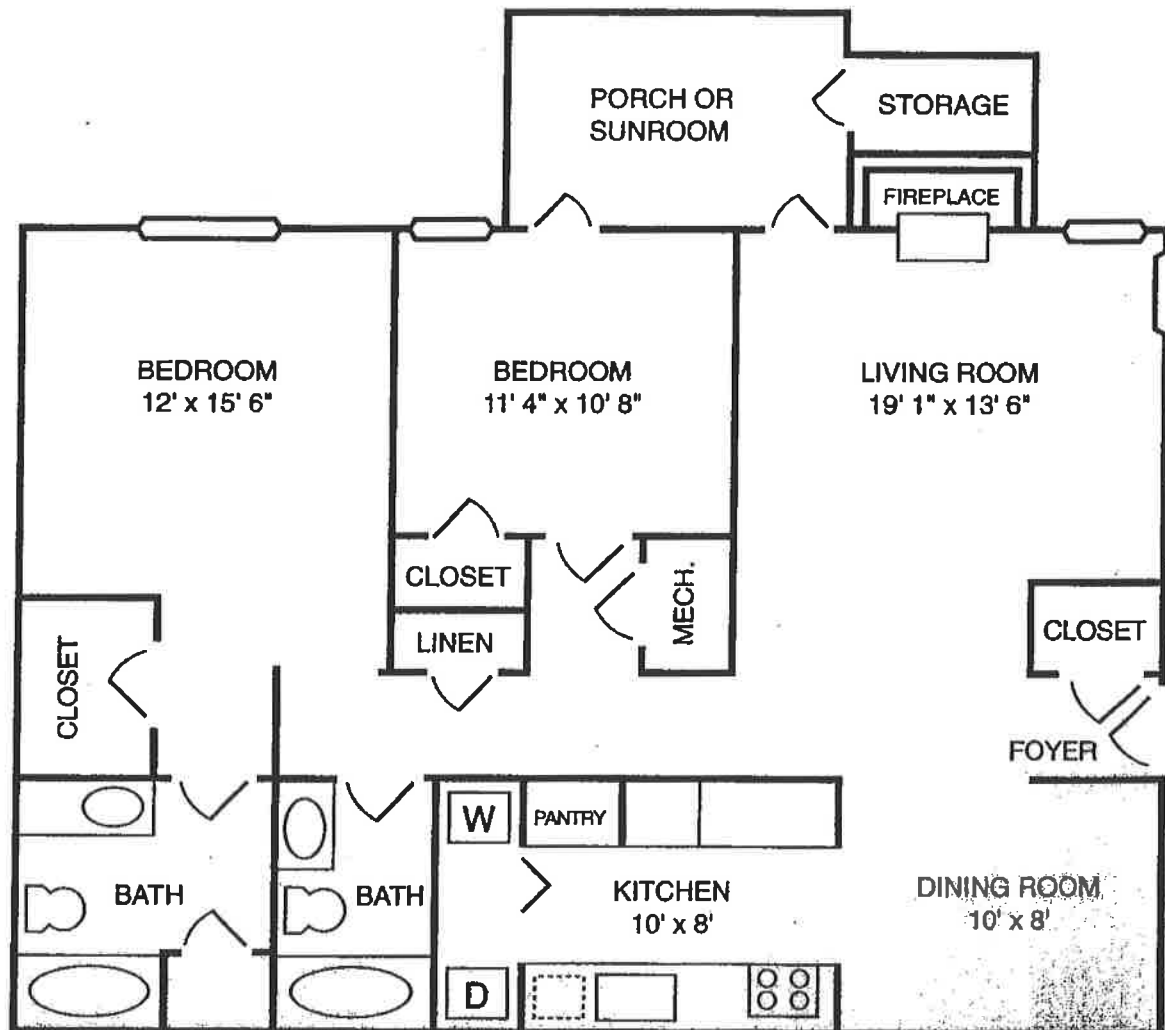
A Private Condominium Residence  
With More Than A View

EXHIBIT B  
Page 10 of 15

If large is how you like it, you'll be pleased with our Sunrise model's square footage and excellent, open layout. An impressively spacious living room is an attractive architectural element that makes the home immediately inviting. Depending on the actual plan, a bright sunroom or open deck leads out from the living room for extra entertainment space. The beautiful kitchen, with pantry and private laundry alcove, is open to the formal dining room beyond. And which bedroom will you choose for your own? It's a tough decision. One has separate access to the porch and the other is a master suite retreat with an oversized closet and private bath.

The main bath and linen closet are conveniently located near the secondary bedroom.

Each of our homes features its own unique architectural elements—which may include a fireplace, built-in bookcases, kitchen pass-through, dining bars, French doors and vaulted ceilings. Upgraded standard amenities, such as oak cabinetry, ceramic tile baths, a quarry tile foyer, additional storage off porch or sunroom, and energy-efficient, double-pane windows, are just a few of the extra touches at Horizon.



# TWILIGHT

3 BR/2 BA  
Aprx. 1,476 Sq. Ft.

# HORIZON

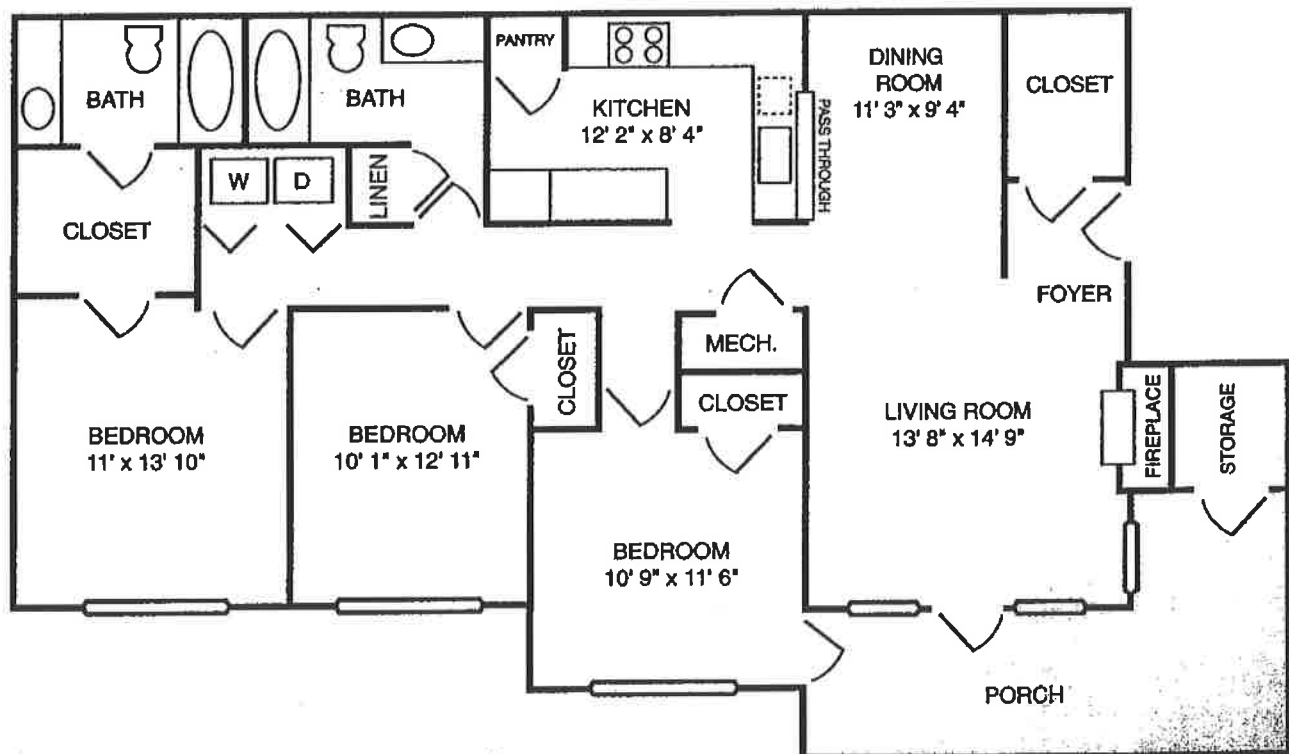
A Private Condominium Residence  
With More Than A View

## EXHIBIT B Page 11 of 15

Room—it's what everyone's looking for. And the Twilight model at Horizon has more than enough of it, along with a beautiful floor plan. An entry foyer leads into the spacious living room and formal dining room. A wonderful wraparound porch with access from the living room expands your entertainment space and brings in a pretty view of the outdoors. The spacious gourmet kitchen, adjacent to the dining and living rooms, offers plenty of countertop space along three walls and a large pantry for food storage. To ensure privacy, the master suite and two secondary bedrooms—one with bonus access to the porch—lie secluded beyond. Featuring a luxurious, ceramic tile master bath and a very spacious closet,

the master suite is the perfect retreat at the end of the day. A laundry room and second bath with its own linen closet is centrally located near the secondary bedrooms.

Each of our homes features its own unique architectural elements—which may include a fireplace, built-in bookcases, kitchen pass-through, dining bars, French doors, and vaulted ceilings. Upgraded standard amenities, such as oak cabinetry, ceramic tile baths, a quarry tile foyer, additional storage off porch or sunroom, and energy-efficient, double-pane windows, are just a few of the extra touches at Horizon.



# DAYBREAK

2 BR/2 BA  
Aprx. 1,221 Sq. Ft.

EXHIBIT B  
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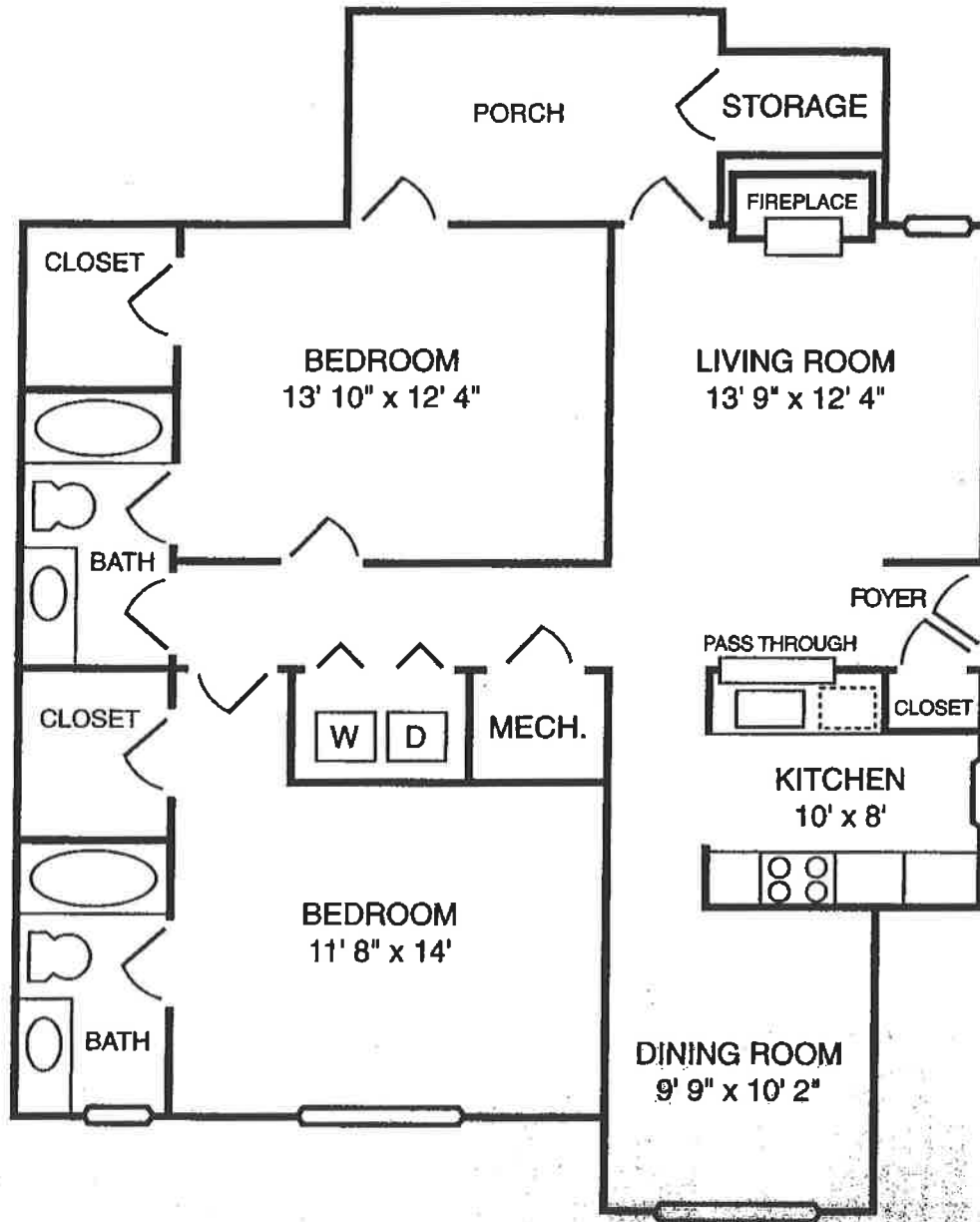
# HORIZON

A Private Condominium Residence  
With More Than A View

Designed with plenty of room in mind for entertaining and comfort, the Daybreak model is a singular example of livability. A spacious living room welcomes visitors to gather and socialize and, depending on the plan, wander out to the sunroom or get some fresh air on the open deck. The kitchen is the focal point of the main living area, with access on one side to the living room and the windowed formal dining room on the other. Two almost identical and spacious master suites with oversized closets make this a great home for

roommates, an in-law arrangement, or a teen suite.

Each of our homes features its own unique architectural elements—which may include a fireplace, built-in bookcases, kitchen pass-through, dining bars, French doors, and vaulted ceilings. Upgraded standard amenities, such as oak cabinetry, ceramic tile baths, a quarry tile foyer, additional storage off porch or sunroom, and energy-efficient, double-pane windows are just a few of the extra touches at Horizon.



# NIGHTFALL

2 BR/2 BA  
Aprx. 1,162 Sq. Ft.

EXHIBIT B  
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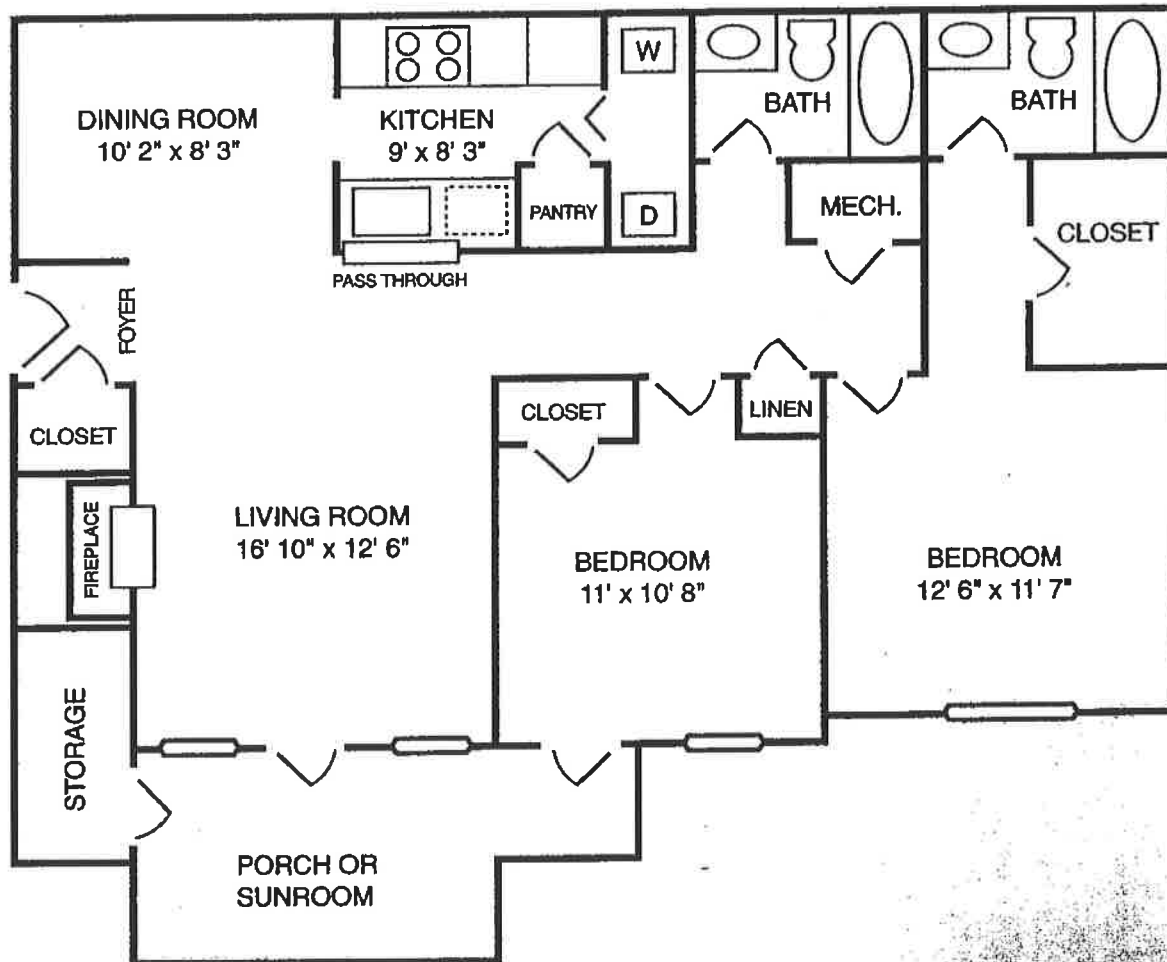
# HORIZON

A Private Condominium Residence  
With More Than A View

If you like to entertain, or need plenty of elbow room, our Nightfall model is a wonderful layout full of versatility and class. A separate formal dining room, an expansive living room, and a choice of bright sunroom or an open deck with French access doors are among the list of features and options. And you'll definitely appreciate the gourmet kitchen with pantry and convenient laundry room tucked nicely out of the way. The spacious master suite is quite an impressive private retreat, with its extra large closet and luxurious ceramic tile master bath. A secondary bedroom, almost as

big as the master, offers plenty of closet space and a private main bath just across the hall.

Each of our homes features its own unique architectural elements—which may include a fireplace, built-in bookcases, kitchen pass-through, dining bar, French doors, and vaulted ceilings. Upgraded standard amenities, such as oak cabinetry, ceramic tile baths, a quarry tile foyer, additional storage off porch or sunroom, and energy-efficient, double-pane windows are just a few of the extra touches at Horizon.



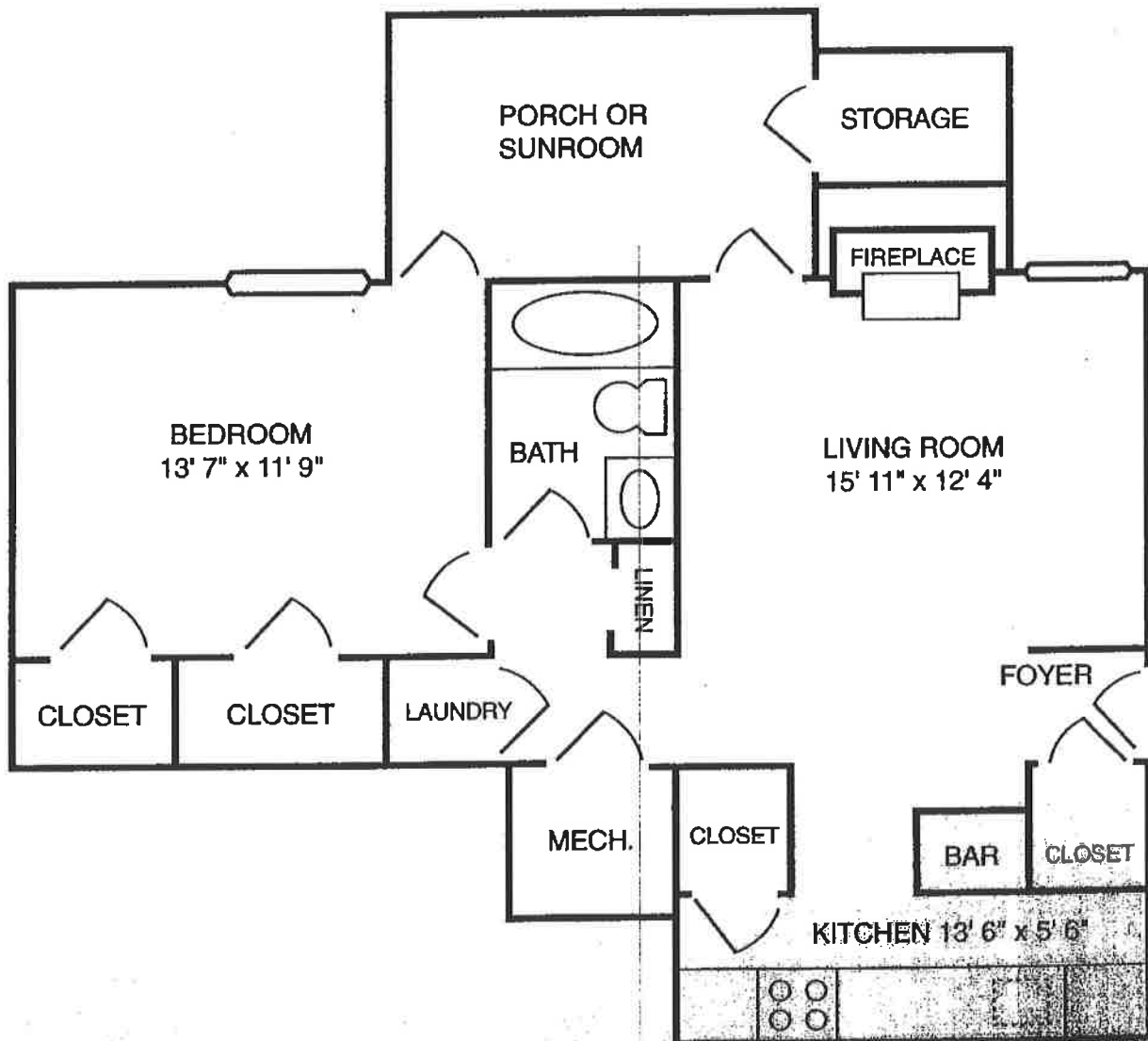
1 BR/1 BA  
Aprx. 847 Sq. Ft.

EXHIBIT B  
Page 14 of 15

The wonderfully distinctive layout of the Dusk model creates a great separation of space between the living area and sleeping quarters of this home. It's privacy at its best. The quarry-tiled foyer leads into the spacious main living area with optional fireplace (per plan). Depending on the plan, you can expand your living space indoors with a bright sunroom or enjoy the fresh air on your open deck. Opposite the living room is an open kitchen with a large pantry that's great for informal dinners and get-togethers. Down a short hallway leading toward the bedroom is a convenient full bath and separate laundry room. Two oversized closets in the

bedroom, easy access to the bath, and direct access to the open deck option make the bedroom a special, private retreat.

Each of our homes features its own unique architectural elements—which may include a fireplace, built-in bookcases, kitchen pass-through, dining bars, French doors, and vaulted ceilings. Upgraded standard amenities, such as oak cabinetry, ceramic tile baths, a quarry tile foyer, additional storage off porch or sunroom, and energy-efficient, double-pane windows are just a few of the extra touches at Horizon.



1 BR/1 BA  
Aprx. 844 Sq. Ft.

EXHIBIT B  
Page 15 of 15

A little bit of heaven is in this well-planned one-bedroom home. A lot of privacy and just the right amount of space to sit back and relax. A cozy dining room and living room area combine to creatively enhance the flow of space, with access to a sunroom or open deck beyond, per plan. And the state-of-the-art kitchen is a model of efficiency with its private laundry alcove on one side and direct access to the dining room on the other. The large bedroom includes a spacious extra-large closet and adjacent full bath, with a convenient

linen closet nearby.

Each of our homes features its own unique architectural elements—which may include a fireplace, built-in bookcases, kitchen pass-through, dining bar, French doors, and vaulted ceilings. Upgraded standard amenities, such as oak cabinetry, ceramic tile baths, a quarry tile foyer, additional storage off porch or sunroom, and energy-efficient, double-pane windows are just a few of the extra touches at Horizon.

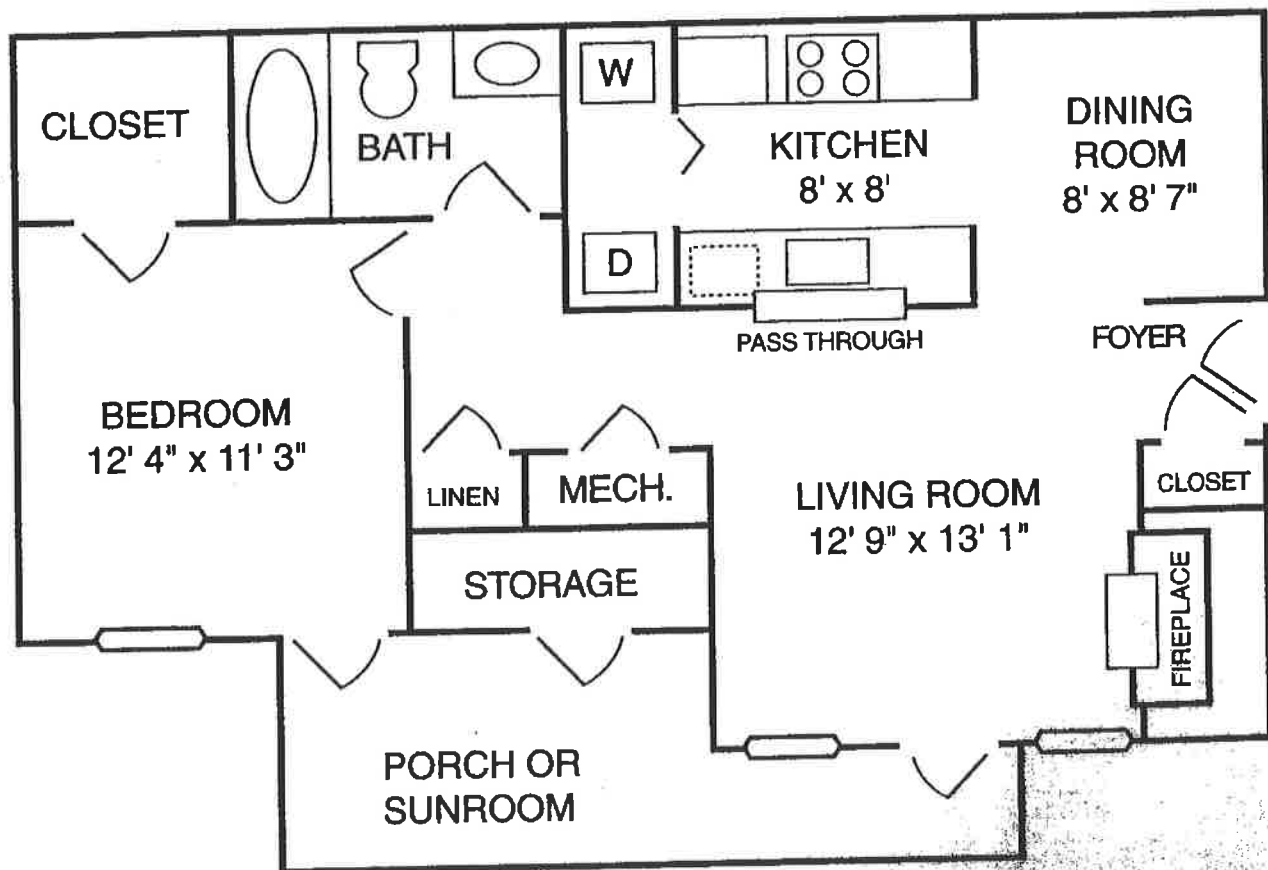


EXHIBIT C  
Page 1 of 5

| Building # | Unit # | Type      | Bed/Bath | Sq. Ftge. | Allocated Interest |
|------------|--------|-----------|----------|-----------|--------------------|
| 100        | 101    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 102    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 103    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 104    | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 200        | 201    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 202    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 203    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 204    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 205    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 206    | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 210        | 211    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 212    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 213    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 214    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 215    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 216    | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 300        | 301    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 302    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 303    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 304    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 305    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 306    | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 400        | 401    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 402    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 403    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 404    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 405    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 406    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 407    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 408    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 409    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 410    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 411    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 412    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 413    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 414    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 415    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 416    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 417    | Sunset    | 1/1      | 844       | 0.4069%            |

EXHIBIT C  
Page 2 of 5

| Building # | Unit # | Type      | Bed/Bath | Sq. Ftge. | Allocated Interest |
|------------|--------|-----------|----------|-----------|--------------------|
|            | 418    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 419    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 420    | Sunset    | 1/1      | 844       | 0.4069%            |
| 500        | 501    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 502    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 503    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 504    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 505    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 506    | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 600        | 601    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 602    | Dawn      | 1/1      | 854       | 0.4117%            |
|            | 603    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 604    | Sunrise   | 2/2      | 1289      | 0.6215%            |
|            | 605    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 606    | Dawn      | 1/1      | 854       | 0.4117%            |
|            | 607    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 608    | Sunrise   | 2/2      | 1289      | 0.6215%            |
| 700        | 701    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 702    | Dawn      | 1/1      | 854       | 0.4117%            |
|            | 703    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 704    | Sunrise   | 2/2      | 1289      | 0.6215%            |
|            | 705    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 706    | Dawn      | 1/1      | 854       | 0.4117%            |
|            | 707    | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 708    | Sunrise   | 2/2      | 1289      | 0.6215%            |
| 800        | 801    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 802    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 803    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 804    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 805    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 806    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 807    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 808    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 809    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 810    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 811    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 812    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 813    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 814    | Nightfall | 2/2      | 1162      | 0.5602%            |

EXHIBIT C  
Page 3 of 5

| Building # | Unit # | Type      | Bed/Bath | Sq. Ftge. | Allocated Interest |
|------------|--------|-----------|----------|-----------|--------------------|
|            | 815    | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 816    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 817    | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 818    | Sunset    | 1/1      | 844       | 0.4069%            |
| 900        | 901    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 902    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 903    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 904    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 905    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 906    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 907    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 908    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 909    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 910    | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 911    | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 912    | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 1000       | 1001   | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 1002   | Dawn      | 1/1      | 854       | 0.4117%            |
|            | 1003   | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 1004   | Sunrise   | 2/2      | 1289      | 0.6215%            |
|            | 1005   | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 1006   | Dawn      | 1/1      | 854       | 0.4117%            |
|            | 1007   | Sunrise   | 2/2      | 1194      | 0.5757%            |
|            | 1008   | Sunrise   | 2/2      | 1289      | 0.6215%            |
| 1100       | 1101   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1102   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1103   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1104   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1105   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1106   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1107   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1108   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1109   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1110   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1111   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1112   | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 1200       | 1201   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1202   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1203   | Nightfall | 2/2      | 1162      | 0.5602%            |

EXHIBIT C  
Page 4 of 5

| Building # | Unit # | Type      | Bed/Bath | Sq. Ftge. | Allocated Interest |
|------------|--------|-----------|----------|-----------|--------------------|
|            | 1204   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1205   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1206   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1207   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1208   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1209   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1210   | Nightfall | 2/2      | 1162      | 0.5602%            |
| 1300       | 1301   | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 1302   | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 1303   | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 1304   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1305   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1306   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1307   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1308   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1309   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1310   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1311   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1312   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1313   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1314   | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 1315   | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 1316   | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 1317   | Sunset    | 1/1      | 844       | 0.4069%            |
|            | 1318   | Sunset    | 1/1      | 844       | 0.4069%            |
| 1400       | 1401   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1402   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1403   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1404   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1405   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1406   | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 1500       | 1501   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1502   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1503   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1504   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1505   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1506   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1507   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1508   | Nightfall | 2/2      | 1162      | 0.5602%            |

EXHIBIT C  
Page 5 of 5

| Building # | Unit # | Type      | Bed/Bath | Sq. Ftge. | Allocated Interest |
|------------|--------|-----------|----------|-----------|--------------------|
|            | 1509   | Nightfall | 2/2      | 1162      | 0.5602%            |
|            | 1510   | Nightfall | 2/2      | 1162      | 0.5602%            |
| 1600       | 1601   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1602   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1603   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1604   | Dusk      | 1/1      | 847       | 0.4084%            |
|            | 1605   | Daybreak  | 2/2      | 1221      | 0.5887%            |
|            | 1606   | Daybreak  | 2/2      | 1221      | 0.5887%            |
| 1700       | 1701   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1702   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1703   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1704   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1705   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1706   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1707   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1708   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1709   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1710   | Twilight  | 3/2      | 1476      | 0.7116%            |
| 1800       | 1801   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1802   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1803   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1804   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1805   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1806   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1807   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1808   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1809   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 1810   | Twilight  | 3/2      | 1476      | 0.7116%            |
|            | 184    |           |          | 207414    | 100.00%            |
|            |        |           |          |           |                    |
|            |        |           |          |           |                    |
|            |        |           |          |           |                    |
|            |        |           |          |           |                    |
|            |        |           |          |           |                    |

**EXHIBIT D**  
**BY-LAWS**  
**OF**  
**THE HORIZON CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I**  
**THE ASSOCIATION**

Section 1. **Identity.** These are the By-Laws of THE HORIZON CONDOMINIUM ASSOCIATION, INC., a not for profit corporation (the "Association"), which was formed under the Alabama Nonprofit Corporation Act (Code of Alabama 1975 §§10-3A-1 et seq.) by filing the Articles of Incorporation of the Association (the "Articles") with the Office of the Judge of Probate of Jefferson County, Alabama. The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of THE HORIZON CONDOMINIUM ASSOCIATION, INC., (the "Condominium"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991 (Code of Alabama §§35-8A-101 et seq.) and the Declaration of Condominium of The Horizon Condominium Association, Inc. (the "Declaration") as filed with time Office of the Judge of Probate of Jefferson County, Alabama in accordance with the provisions of said Act.

Section 2. **Principal office.** The principal office of the Association in the State of Alabama shall be located in the City of Birmingham, County of Jefferson. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 3. **Registered Office.** The registered office of the Association, required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II**  
**MEMBERSHIP**

Section 1. **Annual Meeting.** The annual meeting of the Membership shall be held on the third Tuesday in the month of October in each year, beginning with the year 2001 at the hour of 6:00 P.M., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors, if the period of Developer control has ended, and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the Membership, or at any adjournment thereof, the Board of

Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by a majority of the Board of Directors and shall be called by the President or the Secretary at the request of holders of not less than twenty Percent (20%) of all the outstanding votes of the Membership.

Section 3. Place of Meeting. The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or for any special meeting of the Membership. If no designation to made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10), nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 5. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more then thirty (30) days and, in case of a meeting of the Membership, not less than ten (10) days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the Membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of the Membership has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 6. Voting Lists. The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Membership, a Complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member and the number of votes to which he is entitled, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member

during the whole time of the meeting.

Section 7. Quorum. The presence at any meeting of the Membership of the members entitled to cast twenty percent of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 8. Majority Vote. The vote of members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or those By-Laws.

Section 9. Proxies. At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. A proxy is void if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after one year from the date of its execution, unless a shorter term is provided in the proxy.

Section 10. Voting Rights. If only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest at the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

Section 11. Informal Action by Members. Any action required to be taken at a meeting of the Membership, or any other action which may be taken at a meeting of the Membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

### **ARTICLE III** **BOARD OF DIRECTORS**

Section 1. General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of directors of the

Association shall consist of not less than three (3) nor more than seven (7) directors with the exact number to be fixed from time to time by the members holding a majority of the votes of the Association. The Initial Board of Directors shall consist of five (5) directors.

Section 3. Election of Directors.

(a) Election of directors shall be held at the annual meeting of the Membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality at the votes cast. The owner of each whole Unit shall be entitled to cast his votes for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Developer (as defined in the Declaration), its successors and assigns, shall elect the members of the Board of Directors or the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as either (a) sixty (60) days have elapsed since 75% of the Units have been conveyed to purchasers of Units other than Developer, or (b) three years have elapsed from the conveyance of the first Unit to person other than the Developer, or (c) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. Not later than ninety (90) days after conveyance of 25% of the Units, the Unit Owners other than Developer shall be entitled to elect 25% of the members of the Board. Not later than ninety (90) days after conveyance of 50% of the Units to Unit Owners other than Developer, not less than 33 1/3% of the members of the Board may be elected by the Unit Owners. The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5% of the Units. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership, provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all Directors. The Board of Directors may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two directors.

Section 6. Notice. Notice of any special meeting shall be given at least three (3) days

previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, taking action by a vote of the majority of a quorum, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 9. Action without a Meeting. Any Action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Vacancies. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section 11. Compensation. By resolution of the Board of Directors, the Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a Director or both. No such payment shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Committees. The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of which shall consist of two or more directors and which to the extent provided in said resolution or resolutions or in the By-Laws of the Association shall have and may exercise all of the powers of the Board of Directors in

the management of the activities and affairs of the Association and may have power to authorize the seal of the Association to be affixed to all papers which may require it; except that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the By-Laws; electing, appointing or removing any member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual director of any responsibility imposed upon it or him by law.

Section 13. Resignations. Any Director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor; and the acceptance of such resignation shall not be necessary to make it effective.

Section 14. Place of Meeting. The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

Section 15. Presumption of Assent. A Director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

#### **ARTICLE IV** **OFFICERS**

Section 1. Number. The officers of the Association shall be a President, one or more Vice Presidents(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. The failure of the Board of Directors to elect any officers other than a President and a Secretary shall not constitute a violation of these By-Laws.

Section 2. Election and Term of Office. The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, by the affirmative vote of the Board of Directors, whenever in their judgement the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

Section 4. Vacancies. A vacancy in any office elected or appointed by the Board of Directors because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He or she shall preside at all meetings of the Membership. He or she may sign, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office at President and such other duties as may be prescribe by the Board of Directors from time to time.

Section 6. Vice President. In the absence of the President or in the event of his or her death, inability or refusal to act, the Vice President (or in the event there by more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

Section 7. Secretary. The Secretary shall: (a) keep the minutes at the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the address of each member which shall be furnished

to the Secretary by such member; (e) have general charge of the transfer books of the members of the Association; and (f) in general perform all duties incident to the Office at Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board or Directors.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in a such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and (e) in general perform all of the duties as from time to time may be assigned to him or her by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 9. Assistant Secretaries and Assistant Treasures. The Assistant Secretaries and Assistant Treasurer. In general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurer shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties In ouch sums and with such sureties as the Board of Directors shall determine.

Section 10. Salaries. The salaries of the officers, if any, shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a Director of the Association.

## ARTICLE V CONTRACTS LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner so shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting suit votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

## **ARTICLE VI**

### **BOOKS AND RECORDS**

Section 1. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of members entitled to vote, directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the members or their authorized representatives for any proper purpose at any reasonable time. Such records shall include:

(a) Association Accounts. The receipts and expenditures of the Association shall be credited and charged to the appropriate account as set forth below.

(i) Current Expenses. All funds to be expended during the year for the maintenance of the Common Elements and Limited Common Elements (as defined in the Declaration) and the operation and working capital of the Association shall be held in the Current Expense Account. Any balance in this fund at the end of each year may be used to pay Common Expenses and Limited Common Expenses incurred in any successive year or may be placed in the Reserve fund Account.

(ii) Reserve Funds. All funds to be expended for replacement, acquisition and repair of capital improvements which are a part of Common Elements and Limited Common Elements shall be held in the Reserve Fund Account.

(b) Member Accounts. An account for each member shall be maintained setting

forth the name and address of the member, the interest percentage in the Common Elements and Limited Common Elements, if any, the amount of each assessment, the dates and amounts in which the assessments become due, the amounts paid upon the account and the balance due.

Section 2. Budget. Within sixty (60) days prior to the beginning of each calendar year the Board of Directors shall adopt proposed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and Limited Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Within thirty (30) days Of Adoption of the proposed budget copies of the budget and proposed assessments shall be transmitted to each member of the Association and a date set for a meeting of the unit Owners to consider ratification of the budget, not less than fourteen (14) days nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum in present. In the event the proposed budget is rejected, the budget for the last year shall continue in effect until such time a new budget is ratified.

Section 3. Assessments. Assessments against the members for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in quarterly or monthly installments, as may be, determined by the Board of Directors of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

Section 4. Assessments for Emergencies. Assessment for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such to given to the members concerned. and it &hall be due 30 days after such notice in such manner as the Board of Directors may require in the notice of assessment.

Section 5. Audit of Compilation. An audit or compilation of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audit report shall be made available for review by each member.

Section 6. Bonds. Fidelity bonds shall be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but shall not be less than three times amount of the total annual assessments against members for Common Expenses and Limited Common Expenses. The premiums of such Bonds shall be paid by the Association.

## **ARTICLE VII** **WAIVER OF NOTICE**

Whenever any notice is required to be given to any member or director of the Association

under the provisions of these By-Laws, the Articles of Incorporation, the Declaration, the provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, the provisions of the Alabama Uniform Condominium Act, and any act amendatory thereof, supplemental thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

### **ARTICLE VIII** **FISCAL YEAR**

The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

### **ARTICLE IX** **INDEMNIFICATION**

Section 1. The Association shall Indemnify any person who was or is a party or in threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by his in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to this best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his

duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under Sections (1) and (2) above (unless ordered by a court) shall be made by the Association only authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections (1) and (2). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the membership.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking Indemnification may be entitled under any by-law, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## **ARTICLE X** **AMENDMENT**

Section 1. Amendment to By-Laws. These By-Laws may be amended, altered or repealed in the following manner:

(a) By the Developer until such time as Developer relinquishes its control of the Association; or

(b) By the members at any regular or special meeting upon the affirmative vote of the a holders of not less than two thirds of the outstanding votes.

Section 2. Recordation. No modification or amendment to the By-Laws shall be valid and effective until the President and Secretary of the Association shall certify so to the adoption of such amendment and shall file their certificate setting forth the text of the amendment with the Office of the Judge of Probate of Jefferson County, Alabama.

THE HORIZON CONDOMINIUM ASSOCIATION, INC.  
 BIRMINGHAM, AL (SMELBY CO.)  
 BUDGET  
 Jan-91

| DESCRIPTION                 | JAN    | FEB    | MAR    | APR    | MAY    | JUN    | JUL    | AUG    | SEP    | OCT    | NOV    | DEC    | TOTAL   |
|-----------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| INCOME                      |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Association Dues            | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 286,820 |
| TOTAL RENTAL INCOME         | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 286,820 |
| Less Fees                   |        |        |        |        |        |        |        |        |        |        |        |        | 0       |
| Clubhouse Income            |        |        |        |        |        |        |        |        |        |        |        |        | 0       |
| Sublet/Storage Fees Through |        |        |        |        |        |        |        |        |        |        |        |        | 0       |
| Interest Income             | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0       |
| Social Income               |        |        |        |        |        |        |        |        |        |        |        |        | 0       |
| Keys                        |        |        |        |        |        |        |        |        |        |        |        |        | 0       |
| Other Misc. Income          |        |        |        |        |        |        |        |        |        |        |        |        | 0       |
| TOTAL OTHER INCOME          | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0       |
| TOTAL INCOME                | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 23,970 | 286,820 |

OPERATING EXPENSES:

| DESCRIPTION        | JAN   | FEB   | MAR   | APR   | MAY   | JUN   | JUL   | AUG   | SEP   | OCT   | NOV   | DEC   | TOTAL  |
|--------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| Insurance Premiums | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 50,000 |
| TOTAL INSURANCE    | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 4,167 | 50,000 |

| DESCRIPTION                      | JAN    | FEB    | MAR    | APR    | MAY    | JUN    | JUL    | AUG    | SEP    | OCT    | NOV    | DEC    | TOTALS  |
|----------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| <b>PROFESSIONAL FEES</b>         |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Legal                            | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 1,200   |
| Management Fees (150/hour)       | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 2,700  | 32,400  |
| Accounting                       | 250    | 250    | 250    | 250    | 250    | 250    | 250    | 250    | 250    | 250    | 250    | 250    | 3,000   |
| Other                            | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0       |
| <b>TOTAL PROFESSIONAL FEES</b>   | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 3,150  | 37,200  |
| <b>UTILITY EXPENSE</b>           |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Electricity - Common Areas       | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 12,000  |
| Gas                              | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 1,000  | 12,000  |
| Water & Sewer                    | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 4,500  | 54,000  |
| <b>TOTAL UTILITY EXPENSE</b>     | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 6,500  | 78,000  |
| <b>REPAIRS &amp; MAINTENANCE</b> |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Roofing                          | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 1,200   |
| Structural Repairs               | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 1,200   |
| Electrical Repairs               | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 1,200   |
| Plumbing Repairs and Siding      | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 100    | 1,200   |
| General Maintenance Supplies     | 80     | 80     | 80     | 80     | 80     | 80     | 80     | 80     | 80     | 80     | 80     | 80     | 960     |
| Vermin Board                     | 200    | 200    | 200    | 200    | 200    | 200    | 200    | 200    | 200    | 200    | 200    | 200    | 2,400   |
| General Repairs                  | 87     | 87     | 87     | 87     | 87     | 87     | 87     | 87     | 87     | 87     | 87     | 87     | 1,044   |
| PV/C Repairs                     | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 40,000  |
| Landscape and Irrigation         | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 600     |
| Painting Repairs/Supplies        | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 2,800   |
| Pool Supplies / Repairs          | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 233    | 2,800   |
| Roofing Repair                   | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 50     | 600     |
| <b>TOTAL REPAIRS &amp; MAINT</b> | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 4,300  | 51,600  |
| <b>PAYROLL</b>                   |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Maintenance Supervisor           | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 23,000  |
| <b>TOTAL PAYROLL</b>             | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 1,917  | 23,000  |
| <b>PERSONAL TAXES</b>            |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Personal Tax                     | 220    | 220    | 220    | 220    | 220    | 220    | 220    | 220    | 220    | 220    | 220    | 220    | 2,640   |
| Workers Comp                     | 12     | 12     | 12     | 12     | 12     | 12     | 12     | 12     | 12     | 12     | 12     | 12     | 144     |
| Group Health                     | 341    | 341    | 341    | 341    | 341    | 341    | 341    | 341    | 341    | 341    | 341    | 341    | 4,096   |
| Unemployment                     | 10     | 10     | 10     | 10     | 10     | 10     | 10     | 10     | 10     | 10     | 10     | 10     | 120     |
| <b>TOTAL PAYROLL RELATED</b>     | 583    | 583    | 583    | 583    | 583    | 583    | 583    | 583    | 583    | 583    | 583    | 583    | 7,000   |
| <b>CAPITAL RESERVES</b>          |        |        |        |        |        |        |        |        |        |        |        |        |         |
| Reserve                          | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 3,333  | 40,000  |
| <b>TOTAL OPERATING EXPENSES</b>  | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 23,910 | 286,800 |

| DESCRIPTION     | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP     | OCT    | NOV | DEC | TOTALS              |
|-----------------|-----|-----|-----|-----|-----|-----|-----|-----|---------|--------|-----|-----|---------------------|
| Capital Reserve | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0       | 0      | 0   | 0   | 0                   |
| Repairs/Lease   | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0       | 0      | 0   | 0   | 0                   |
|                 |     |     |     |     |     |     |     |     |         |        |     |     | Annual              |
|                 |     |     |     |     |     |     |     |     | 208,000 | 2011   |     |     | 20,800              |
|                 |     |     |     |     |     |     |     |     | 25,000  | 2007   |     |     | 4,166               |
|                 |     |     |     |     |     |     |     |     | 5,000   | annual |     |     | 5,000               |
|                 |     |     |     |     |     |     |     |     | 3,308   | annual |     |     | 3,308               |
|                 |     |     |     |     |     |     |     |     | 2,000   | annual |     |     | 2,000               |
|                 |     |     |     |     |     |     |     |     | 2,000   | annual |     |     | 2,000               |
|                 |     |     |     |     |     |     |     |     |         |        |     |     | 57,285 Buy \$40,000 |

Excess amount sufficient to replace all roofs in 2011  
 Excess amount sufficient to replace roofs in 2007  
 Amount sufficient to replace rotten wood and patch exterior of building on an ongoing basis.  
 Amount sufficient to inspect and repair chimney yearly  
 Other replacement/ ongoing annual expenses  
 General maintenance for exterior of buildings  
 Items subject to special assessment on an as needed basis:  
 Repurchase waste counts 4000  
 Repurchase food 6500

**EXHIBIT F**

**SCHEDULE OF RESERVED RIGHTS**

| <b><u>Description of Right</u></b>  | <b><u>Affected Property</u></b>  | <b><u>Time Limit</u></b>                               |
|---|--|--|
| Right to create Common Elements or Limited Common Elements within the Condominium   | All or a portion of the Condominium Property   | During the Sales Period                                |
| Right to convert Condominium Units into Common Elements   | Any Condominium Units owned by the Developer, by a Designated Successor, or by an Owner who has consented in writing to any such conversion  | During the Sales Period                                |
| Right to complete improvements indicated on the Condominium Plan  | As shown on the Condominium Plan   | During the Sales Period                                |
| Right to maintain sales offices, management offices, signs advertising the Condominium, and models  | As provided in Section 2.08  | During the Sales Period                                |
| Right to use easements through the Common Elements for the purpose of making improvements within the Condominium or on the Adjoining Property | Such portion of the Common Elements as may be reasonably necessary for the purpose of exercising any Reserved Rights or discharging any obligations of the Developer, whether arising under the Act or under the Condominium Documents | On or before April 1, 2006                             |
| Right to remove any officer of the Association or any member of the Board   | Not applicable   | Prior to expiration of the Period of Declarant Control |

**EXHIBIT G**

(restrictions, easements, conditions and limitations now of record in the Probate Office which Condominium Property is subject to)

- a. Assignment dated January 10, 2001 and recorded January 12, 2001 at 9:40 A.M. in Instrument No. 2001-01349 assigned to Protective Life Insurance Company the mortgage on which said policy is issued. Amended and Restated Mortgage and Security Agreement dated January 11, 2001 and filed for record January 12, 2001 at 9:40 A.M. in Instrument No. 2001-01350, in the Probate Office of Shelby County, Alabama.
- b. UCC recorded in Instrument No. 2001-01352 executed by Morning Sun Villas, L.L.C. to Protective Life Insurance Company filed for record on January 12, 2001 in the Probate Office of Shelby County, Alabama.
- c. Storm sewer and drainage easement between Daniel U.S. Properties, Ltd., and Daniel Properties XV dated 8-1-86, recorded in Real Record 86, page 349, in the Probate Office of Shelby County, Alabama.
- d. Sewer line easement and connection agreement between Daniel U.S. Properties, Ltd., and Daniel Properties XV dated 9-23-85, recorded in Real Record 43, page 611, in the Probate Office of Shelby County, Alabama, as modified by that certain First Modification to Sewer Line Easement and connection agreement dated 8-14-86, recorded in Real Record 86, page 355, aforesaid records, as further modified by that certain quitclaim deed with reservation of rights dated 1-31-94, recorded in Instrument 1994-03407, aforesaid records.
- e. Quitclaim deed with reservation of rights dated 1-31-94, recorded in Instrument 1994-03407, in the Probate Office of Shelby County, Alabama.
- f. Right of Way granted by Daniel U.S. Properties, Ltd. to Alabama Power Company, recorded in Real Book 2, page 792 and in Real Book 2, page 797, in the Probate Office of Shelby County, Alabama.
- g. Mineral and mining rights and rights incident thereto recorded in Deed Book 32, page 48, in the Probate Office of Shelby County, Alabama.
- h. Terms and provisions of quitclaim deed with reservation of rights between Daniel U.S. Properties Limited Partnership II and Daniel Properties XV Limited Partnership recorded in Instrument 1994-03407, in the Probate Office of Shelby County, Alabama.
- i. Collateral Assignment of Contract Documents executed by Morning Sun Villas, L.L.C., an Alabama limited liability company to Compass Bank dated December 18, 1998, filed for record on December 23, 1998, and recorded in Instrument No. 1998-51184, in the Probate Office of Shelby County, Alabama.
- j. UCC recorded in Instrument 1998-51185 executed by Morning Sun Villas, L.L.C. to Compass Bank filed for record on December 23, 1998 in the Probate Office of Shelby County, Alabama.

Inst # 2001-40927

09/21/2001-40927  
09:09 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
079 MSB 251.00